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No. 85-1433

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1985

GLORIA RICHARDSON, WARDEN
Petitioner

vs.

CLARISSA MARSH
Respondent

ON WRIT OF CERTIORARI
TO THE SIXTH CIRCUIT COURT OF APPEALS

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED
FEBRUARY 24, 1986
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DOCKET ENTRIES

1983

July 6: Motion by defendant/petitioner to proceed in forma pauperis, brief and affidavit in support, attachments, and proof of service.

July 6: order granting petition to proceed in forma pauperis

July 6: Petition for writ of habeas corpus, memorandum of law.

July 6: Order requiring filing of responsive pleading by 8/30/83.

July 13: Receipt for certified mailing as to defendant/Respondents Richardson and Kelly mailed 7/13/83.

July 19: Return for certified mailing as to defendant/Respondent Richardson executed on 7/18/83.

July 20: Return receipt executed on 7/14/83 as to Frank Kelly, attorney general.

July 25: Appearance of counsel on behalf of defendants.

July 25: Opposition by defendants to petition for writ of habeas corpus.

August 11: Notice of filing transcript and appellate briefs and proof of service.

August 11: Memorandum opinion and order that the petition for writ of habeas corpus be denied.

October 11: Judgment that Petition for writ of habeas corpus is denied.

DOCKET ENTRIES

October 25: Notice of Appeal by Clarissa Marsh.

1985

July 25: Appellant's Brief filed.

August 22: Appellee's Brief filed.

November 7: Oral argument held.

November 15: Petitioner's Supplemental Brief filed.

November 23: Respondent's Supplemental Brief filed.

1986

January 23: Opinion reversing the district court filed.

February 2: Motion for stay of mandate filed.

February 8: Answer to motion for stay of mandate filed.

February 25: Petition for Certiorari filed.

February 26: Motion for stay of mandate denied.

March 3: Mandate issued.

March 22: Opposition to Petition for Certiorari filed.

May 12: Conditional writ entered by district court.

June 9: Certiorari granted by United States Supreme Court.

PROSECUTOR'S OPENING STATEMENT

Recorder's Court
(97) Detroit, Michigan
Monday, April 16, 1979

MR. KRISCUINAS: Thank you, your Honor. Good afternoon, ladies and gentlemen of the (98) Jury. First of all, I would like to thank you for your attentiveness throughout the jury selection process. This is a very important case, not only to the Defendant but to the People of the State of Michigan. Your attention throughout the trial is very important. When you came into the courtroom today you knew absolutely nothing about this case. That's why you are an impartial juror and that's why you can sit on this case, because we want jurors to sit who know nothing about the case. The way you will

hear about the case is from the witness stand. Witnesses will tell you what happened. That way you don't have any prejudices or any preconceived notions about what happened. You will hear it from the witness stand the first time.

Now, talking about note-taking, I submit that if this was the kind of case that you needed to take notes, the Court would have told you that and he would have given you pencil and paper so that you could write it down. I'm sure that your collective memories will remember all of the details and all of the testimony, and if there's any problem in sorting out something, because sometimes people hear different things, and if you say, "Hey, I wrote it down on paper, so it must be right," you will get different opinions from different jurors as to how they heard something. So when you're in

the juryroom you can discuss the testimony and evidence collectively and decide among yourselves what the facts are.

Now, I submit that throughout the course of the (99) trial the attorneys will introduce relevant evidence, and based on that evidence you will be able to make your decision. Your job will be twofold. First of all, you will have to say whether or not Benjamin Williams and Clarisa Marsh were actually there at the place on Mendota. Once you decide that, your job then comes, if you decide from the evidence and are satisfied that they were there -- your job then becomes what are they guilty of. And that decision will come from the evidence. You have to decide what if anything they are guilty of.

The purpose of the opening statement is kind of to summarize the opening

statement for you, because we've endorsed some 15 to 20 witnesses -- probably not all of them will be called because they are not all really necessary, but there are some 15 to 20 witnesses who may testify. When you hear the testimony of the witnesses one at a time and I give you an opening statement to give you a picture of the case so that you can recognize the importance of each witness's testimony in making a complete picture of this trial.

I would like to start this case by reading again the Information. As the Court told you, it is not evidence. In fact, anything that I tell you is not evidence. Anything that the Defense Attorneys tell you is not evidence. The evidence comes solely from the witness stand. If there is something that I tell you that is not supported by the evidence, then don't take my word for it;

you are bound by what the witnesses say. (100) And the same thing goes for what the attorneys say. Your decision is made solely from the evidence.

Now, the evidence is a charging document and it does what its name says it does; it informs the Defendants of the charges against them. It charges that on October 29th, 1978, at 12627 Mendota in the city of Detroit, the Defendant Clarissa Marsh and the Defendant Benjamin Williams, while in the perpetration or attempted perpetration of a robbery, did kill and murder one Ollie Scott, contrary to the Michigan statutes.

It charges that at the same time and at the same location the Defendant Clarissa Marsh and the Defendant Benjamin Williams, while in the perpetration or attempted perpetration of a robbery, did kill and murder one Koran Knighton, contrary to the Michigan statute.

PROSECUTOR'S OPENING STATEMENT

Count III charges that in the same location and at the same time, the Defendant Clarissa Marsh, the Defendant Benjamin Williams, did assault Cynthia Knighton with intent to murder with a certain weapon, to-wit a handgun, contrary to the Michigan statute prohibiting that crime.

Now, the Defendants begin the trial with the presumption of innocence. The People have the burden of proof. Our burden of proof is to prove that the Defendants are guilty beyond a reasonable doubt. How do we do that? We do that with the testimony of the witnesses. Obviously, I wasn't there. If (101) I was there and I saw what happened I would have to be a witness in this case. So we do that through the testimony of the witnesses.

There is really only one key witness

for the People out of the 15 or 20 that are endorsed in this Information, and that is Cynthia Knighton, the Complainant in Count III. She's the key witness because on October 29th, 1978, she was at 12627 Mendota; she was there with her four-year-old son, Koran Knighton, visiting Ollie Scott, her aunt. She will testify that she went over there to visit on a Sunday; that it was not an unusual visit, and that while she was there visiting her aunt and she was upstairs washing her son's hands she heard some voices downstairs. You will hear her testify that the people who were downstairs, there was a man and a woman, and the woman that was there was Clarissa Marsh. She will testify that she came downstairs with her son and that her aunt, Ollie Scott, introduced Clarissa Marsh to her. She said something like Clarice or Clarissa, she wasn't sure of

the exact name at the time. She will tell you, as she told the police officers, she wasn't sure of the name. And she told them that Miss Marsh knew her aunt and her aunt knew Miss Marsh. She will testify that they had a conversation and that then Miss Marsh went into the livingroom and they discussed another aunt and they sat around talking for a period of time when the man pulled out a gun, and that man we're talking about, he's not in court today. (102) I told you that there were three people involved in this; he is not in court now. That man pulled out a gun and started talking about Mrs. Scott, saying, "You know something about so-and-so who was killed." The reason we don't know who the so-and-so is is because Miss Knighton doesn't remember the exact name; she wasn't familiar with the name that the man gave.

PROSECUTOR'S OPENING STATEMENT

She will testify that Mrs. Scott said, "I don't know anything at all about that," and that Miss Marsh then said, "Yes, you do. Don't you remember," or something to that effect. She will testify that when the man pulled out the gun Miss Marsh went to the front door and she stood by the front door. She will testify that the man was arguing about some shooting and there was -- the doorbell rang. And the man said, "Do you know who that is?" And Mrs. Scott said, "No, I don't know who it is." And that Miss Marsh opened the door for that man to come in. And that man was Benjamin Williams.

That Benjamin Williams came in and he had his hand over his mouth and he had a gun at his side and that eventually he dropped his hand from his face so that she was able to recognize him and to be able to identify him. She will tell you

that he too pulled out a gun and said, "I'm so-and-so's brother, you know about the killing. And I think that you will see eventually that this was all a ruse; that the real reason that the three people were there was to rob Mrs. Scott.

Now, you're going to hear some testimony perhaps (103) that Mrs. Scott was involved in numbers and she had some money and that's why that particular location was chosen.

You will hear the testimony that when Mr. Williams came into the house he had his gun out and he told Cynthia Knighton and her four-year-old son to lay on the floor in the livingroom. She will testify that the man took Mrs. Scott upstairs to the bedroom where there was a cash box. She will testify that the man -- that Mrs. Knighton remained downstairs. She will testify that Mr.

Williams went into the kitchen and was looking around in the kitchen. She will testify that at that point she got up with her child and tried to run for the door to get out of the house. And she will testify that Miss Marsh grabbed her on the arms and wouldn't let her open the door and that Mr. Williams came back with this gun and said, "Get back down on the floor." She then will tell you that Mr. Williams went upstairs also where Mrs. Scott was with the first man; that she heard a voice upstairs saying, "Where's the money? Give me more money." She will testify that she heard her aunt say, "You've got it all; I don't have any more money." She will testify that the three persons then came down, Mr. Williams, the other man and Mrs. Scott -- that they came downstairs and one of the two men handed Miss Marsh a bag and that Miss

Marsh stayed at that front door. you will hear the testimony that this man took Mrs. Scott downstairs into the basement and that after a short minute or so Mr. Williams told Cynthia Knighton (104) and her child to go downstairs in the basement, also. She will tell you that in the basement the man had her aunt laying down on the floor in the basement in one corner; that Mr. Williams followed Cynthia Knighton and her son downstairs and that she walked over to a corner not too far from where her aunt was. She will tell you that while she was there she knelt down on her knees and that she heard two shots from the area of where this other man was and where Mrs. Scott was.

You will then hear the testimony that the man then walked over to where Cynthia Knighton was, that he had some

type of a canvas or a blanket or something and that he held that up in front of her, perhaps so that the blood wouldn't squirt, or for some reason, and fired a total of some four shots -- I believe there were three shots -- that struck Cynthia Knighton. And I think it was one shot that struck Koran Knighton, her son.

She will testify that at the time this other man pulled the trigger Mr. Benjamin Williams was some six feet away with his gun out, also, standing in the same line of vision; that she was on her knees, that the other man was on his knees facing her holding up the canvas and that Mr. Williams was a short distance behind him watching everything with his gun out.

The Court is going to instruct you on the law that is to be applied in this

case. One important instruction that the Court will instruct you on is the law of aiding and abetting. A person who aids, assists or counsels another in the (105) commission of a crime, the Court will tell you, is just as guilty as the actual person that committed the crime. For instance, in an armed robbery case, if three people enter a house, one person has a gun, two people don't have guns, and all three people participate in an armed robbery of Officer Harris and I take his wallet at gunpoint or I hold a gun on officer Harris and two people go and they take his wallet out and then we all walk out and share the money, obviously we're equally guilty of armed robbery. I'm guilty of armed robbery because I have the gun, even though I didn't take anything physically from the man. The other two people are just as

guilty of armed robbery even though they didn't have handguns in their possession at the time, because they intended to rob the person, the victim.

How do you know a person's intent? The People's theory in this case is that the other man, Mr. Williams, and Miss Marsh, are all equally guilty, they are all equally responsible for the death of Ollie Scott and Koran Knighton, and they are all equally responsible for the shooting of Cynthia Knighton. And it's only because Cynthia Knighton is still alive, that she was not killed, that we are here today.

The key question for you, ladies and gentlemen of the Jury, is going to be whether or not these two Defendants intended to participate in that robbery and whether they participated in the murder. I think that that's really the

key (106) issue for you and that's the purpose of the attorneys in the case, who will help assist you in seeing what these issues are. There's only one person who can actually pull the trigger but all three can be guilty of First Degree Murder, and I'll tell you why; because they are all equally involved, they are all equally responsible; and the key is whether they intended to kill. How do you determine that? You'll see from the testimony; that they intended it.

The way that you look at intent is that people express their intent in two ways: They express it through words, "I'm going to kill you;" or they express it through their conduct, the way that they act. You don't have to say, "I'm going to kill you," If you pull a gun on a person and you pull the trigger and then you shoot that person, your conduct has explained it.

PROSECUTOR'S OPENING STATEMENT

I submit to you, ladies and gentlemen of the Jury, that the way the People will prove Clarissa Marsh and Benjamin Williams guilty is through their conduct. The fact that Miss Marsh was the lookout, that she stood by the door, that she let in Mr. Williams and that she remained upstairs and made sure that no one else came in and stopped their plans or discovered them; the fact that she kept Cynthia Knighton and Koran Knighton from escaping when they wanted to; the fact that she was known to Mrs. Smith because she was introduced by name; the fact that she would be able to be recognized by Cynthia Knighton (107) because she saw her as well as knew her name at that time; she had an interest in the death of all three of these people; she had an interest in the pulling of the trigger and the shooting of the bullets into all these people.

PROSECUTOR'S OPENING STATEMENT

As to Mr. Williams, he cooperated in the robbery. He also had his gun. He led Koran Knighton to his death down in the basement. He led Cynthia Knighton down the steps into the basement where she was shot. When Mr. Williams was arrested by the police he was photographed. You will hear testimony that the photographs were taken to the hospital where Cynthia Knighton was and that she picked out his photograph; that when he was first arrested he made a statement to the police and in that statement he said, "Hey, I don't know nothing about this crime. I don't know anything about it. I was over at a friend's house."

MR. HILL: I think we're entering an area, your Honor --

THE COURT: Mr. Kriscuinas?

MR. HILL: May we approach the bench, your Honor?

THE COURT: Yes.

(Side bar discussion.)

MR. KRISCUINAS: As I told you earlier, sometimes objections are made and you follow the instructions of the Court. I submit to you, ladies and gentlemen of the jury, that you will know the intent with which both Defendants acted. i submit that you will be satisfied beyond a reasonable doubt of their guilt (108) in the shootings. I submit that at the conclusion of the testimony, at the conclusion of the arguments, you will return a verdict of guilty of First Degree Murder in Count I against both Defendants, in Count II against both Defendants, and guilty of Assault With Intent to Murder in Count III.

Now, just to let you know what is going to happen today, you will hear the

testimony from the Assistant Wayne County Medical Examiner, who will testify that he performed autopsies on both bodies identified to him as Ollie Scott and Koran Knighton, and he will tell you that he determined the cause of death as to each individual to be gunshot wounds. He will testify about these autopsies.

In addition you will hear stipulations. A stipulation is an agreement between the parties that if a witness came in that is what he would testify to. We have a stipulation that if Raymond Scott were here today he would testify that he went to the Wayne County Morgue and he identified the bodies of Ollie Scott and Koran Knighton to the Assistant Wayne County Medical Examiner.

I ask you to pay close attention to all the testimony elicited here and to all the arguments, and I thank you for your attentiveness.

MOTION FOR SEVERANCE

Recorder's Court

(19) Detroit, Michigan

MR. WALKER: Yes, I have a couple of brief motions, your Honor.

First, I would like to renew my motion for severance in this case. I believe that given the authority of People v Hearst, found at 396 Michigan, page 1, and the language in that case which indicates, or gives indications, for separate trials, that this case is one that is contemplated by that case, and therefore I would renew the motion that has already been brought and argued in this case.

THE COURT: I believe that the Hearst Case was the one that you cited at the time that you argued your motion initially, is it not?

SEVERANCE

MR. WALKER: Yes, sir.

THE COURT: Mr. Hill?

MR. HILL: I would join my brother counsel in that motion, your Honor.

THE COURT: Based upon the previous statement of the Court, the motion for severance is denied, because the Court is not convinced as to the inconsistency of the defenses entered of the two defendants.

TESTIMONY OF CYNTHIA KNIGHTON

Recorder's Court
(155) Detroit, Michigan
April 18, 1979

A: Yes, I am.

Q: Where do you work?

A: Michigan Bell.

Q: What do you do at Michigan Bell?

A: Telephone operator.

Q: Are you still working there now?

A: Yes.

Q: I want to direct your attention back to October 19th, 1978, sometime around 6:30 in the evening, did you go to 12627 Mendota in the city of Detroit?

A: Yes.

Q: And whose home was that?

A: My aunt's.

Q: What was your aunt's name?

A: Ollie Scott.

TESTIMONY OF CYNTHIA KNIGHTON

Q: When you went there did you go there alone or did you go there with someone else?

A: No, I went with my son; that's all.

Q: And when you were there was anyone else there?

A: Yes.

Q: Who else was there?

A: My brother, my sister-in-law, a friend of theirs; that's all -- my aunt.

Q: Do you know what their names are, for the record.

A: Darryl Johnson, Jennifer Johnson, Craig Simpson.

(156)Q: You arrived at the home sometime around 6:30 in the evening and when you got there what did you do?

A: Talked and sat down and watched television.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Did there come a time when you (sic) brother and the other people left?

A: Yes, they left.

Q: Approximately how long were they there while you were there?

A: About a half-hour.

Q: So sometime around seven o'clock?

A: Yes.

So when they left how many people were in the house altogether?

Three

Q: Yourself, Koran and Ollie Scott?

A: Yes.

Q: What's the next thing you did after your brother left?

A: Watched television for awhile and had something to drink, water, Koolaid.

Q: What's the next thing that happened after that?

A: After that we went upstairs to use the bathroom.

Q: By we, who do you mean?

A: My son and I.

Q: And when you were upstairs using the bathroom did you hear anything downstairs?

A: Yes, after a few minutes I did; voices.

(157)Q: You heard some voices?

A: Uh-huh.

Q: How long did you stay upstairs?

A: I'll say about five minutes.

Q: Did there come a time when you came downstairs?

A: Yes, I did.

TESTIMONY OF CYNTHIA KNIGHTON

Q: And what happened when you came downstairs? Did you come downstairs alone or with your son?

A: I came with my son.

Q: What happened when you came downstairs?

A: I saw some people talking to my aunt.

Q: How many people did you see?

A: Two.

Q: What were their sexes?

A: A man and a woman.

Q: Do you see that woman in court today?

A: Yes.

Q: Would you point her out, please.

A: Right there.

Q: What is she wearing, for the record?

A: Beige coat, black shoes.

TESTIMONY OF CYNTHIA KNIGHTON

MR. KRISCUINAS: Let the record indicate the witness has pointed to and identified the Defendant Clarissa Marsh.

Q: (By Mr. Kriscuinas) The man that was with Mrs. Marsh, do you see him in court today?

(158)A: No.

Q: When you came downstairs what if anything did your aunt do?

A: She introduced me to the woman.

Q: And how did she do that? What did your aunt say?

A: She said, "This is my niece Cynthia, and this is her son. And this is Clarissa, or Clarice."

Q: And when she introduced Miss Marsh to you, how did she do that?

A: She said to Miss Marsh that this is my niece Cynthia and

this is her son Koran. And she said this is Clarice, Clarissa.

Q: You say Clarice, Clarissa; are you sure of the name?

A: I wasn't quite sure of her name, you know.

Q: Did she introduce to you the man by name?

A: No.

Q: Now, when Miss Marsh -- where were you standing when the introductions took place?

A: I had went to sit down on the couch.

Q: You sat down on the couch?

A: Right.

Q: Was that in the livingroom?

A: In the livingroom, yes.

Q: How far was that from the area of the front door?

A: I'll say two feet, maybe.

Q: The couch is right next to the front door?

A: Yes.

(161)Q: By a picture of your aunt, was it a picture of Ollie Scott or a picture of somebody else?

A: No, another aunt.

Q: What was her name?

A: Frances.

Q: And there was some discussion about that photograph?

A: Right, that's what they were talking about.

Q: How long did this conversation take, the conversation in the livingroom?

A: Just a couple of minutes - couple of seconds.

Q: And during this couple of minutes or seconds did Miss Marsh ever leave the room?

A: No.

Q: She remained on the couch next to you?

A: Right.

Q: And did the other man leave the room at all?

A: No.

Q: He remained standing in the livingroom?

A: Well, he was sitting at first on the arm of a chair.

Q: What's the next thing that happened after you had that conversation -- after the conversation was had?

A: The woman said she just came over to pick up something from my aunt and she stood up.

Q: Did she indicate what she came to pick up?

A: I'm not sure what it was.

(162)Q: You're not sure what it was, but she stated there was something that she came over to pick up?

A: Right.

Q: What happened after she said that?

A: Well, then the man pulled -- well he pulled out the gun while we were looking at her, so when we looked back over at him he had pulled his gun out.

Q: When you looked at the man he already had his gun out?

A: Right.

Q: And how far was he from you when he pulled his gun out?

A: Two feet.

Q: What was he doing with the gun?

A: He was pointing it at us.

Q: By us, who do you mean by us?

A: Me, my aunt, my son.

Q: Your son Koran?

A: Right.

Q: When the man pulled out the gun what if anything did he say?

A: He didn't say anything.

Q: Did he ever say anything once the gun was out?

A: Yes, he did.

Q: What was it that he said?

A: He said someone had gotten killed and that my aunt knew something about it.

Q: After this was said what did your aunt say?

(163)A: She didn't say anything.

Q: What if anything did Miss Marsh say when the man said that about knowing somebody got killed?

A: She said something about my aunt was someplace where the man was supposed to be and that she knew something about it, too.

Q: Miss Marsh said that she knew something about it.

A: That my aunt did, yes.

Q: What's the next thing that happened after these words were spoken?

A: Well, when the man pulled the gun out the woman walked over to the front door.

Q: You're talking about Miss Marsh?

A: Miss Marsh, yes.

Q: She walked over to the front door?

A: By the door.

Q: And how far in terms of feet was that from where you were standing -- or how far did she walk?

A: About two feet.

Q: So she got up off the couch and walked over to the door?

A: Right.

TESTIMONY OF CYNTHIA KNIGHTON

Q: The area by the door where Miss Marsh was, was that area well lit?

A: Yes, there was a lamp right there.

Q: And when she stood by the door were you able to see her face?

(164) A: Yes.

Q: When the man pulled the gun out what was Miss Marsh's reaction?

A: She really didn't have any reaction. She just, you know, stood up and went over by the door.

Q: Did she say anything to the man about putting that gun away or anything like that?

A: No.

Q: After Miss Marsh went to the door did the man say anything else?

TESTIMONY OF CYNTHIA KNIGHTON

A: He had grabbed my aunt at that point and he was just holding her, you know.

Q: Did he say anything to your aunt at that time?

A: No.

Q: What was Miss Marsh doing by the door?

A: She looked out the peephole a couple of times.

Q: There was a peephole in the door?

A: Uh-huh.

Q: Did you ever see her leave the area at that time?

A: No.

Q: Did you ever see her try to get out the door?

A: No.

Q: You didn't see her try to run away or anything like that?

A: No.

TESTIMONY OF CYNTHIA KNIGHTON

Q: From where you were, were you close enough to hear the man (165) talk?

A: Yes.

Q: Did you ever hear the man say anything to Miss Marsh over by the door?

A: No.

Q: What's the next thing that happened?

A: The doorbell rang.

Q: What happened after that?

A: The man who was holding my aunt asked who was at the door and she said she didn't know.

Q: She said she didn't know?

A: She didn't know.

Q: What if anything did the man say then?

A: Then he asked her where was Frances; that's my other aunt

that stays there. And she says that she's out of town.

Q: What did Miss Marsh do next?

A: She looked out the peephole, you know, in the door, and she opened the door.

Q: When she opened the door did she let anyone in?

A: Yes.

Q: How many people came in?

A: One.

Q: Was that a man or a woman?

A: A man.

Q: Do you see that man in court today?

(166)A: Yes, I do.

Q: Would you point him out, please.

A: He has a red-flowered shirt on and gray pants.

TESTIMONY OF CYNTHIA KNIGHTON

MR. KRISCUINAS: Let the record indicate the witness has identified the Defendant Benjamin Williams.

Q: (By Mr. Kriscuinas) When Mr. Williams came in the house what if anything did he do?

A: He came in with his hand over his mouth.

Q: Would you show the Jury how he came in with his hand over his mouth.

A: Like this.

Q: Did you notice anything in his hands when he came in?

A: Yes, he had a gun, also.

Q: How was he holding the gun when he came in?

A: Down at his side.

Q: Can you describe what that gun looked like.

A: It was black and long.

Q: Long like a rifle?

A: It was a handgun but it was long --

Q: The gun that the other man had, the first man that came in, can you describe that gun for us.

A: Yes, it was a short, fat, shiny handgun.

Q: By shiny do you mean something like silver?

A: Yes.

Q: And when Mr. Williams came into the house what if anything (167) did he say?

A: He came in and said, "Yeah --" I forget the name, but he said, "Yeah, I'm so-and-so's brother."

Q: Was this the same so-and-so that the first man had talked about?

A: I suppose so, yes.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Do you remember was it the same name? I know you don't remember the name --

A: Yes, it was the same name but I just don't remember --

Q: Now, after he came in did he say anything else?

A: He said, "Where's the money."

Q: Where was Miss Marsh when he said this?

A: Still standing by the door.

Q: Where did Mr. Williams go after he came in the door? Did he stand by the front door or did he move into the livingroom?

A: He went to the livingroom and to the diningroom and to the kitchen. Then he came back out.

Q: Miss Knighton, I would ask you to step down from the witness

stand and take a look at the blackboard that we have. I'll show you a sketch; do you recognize the layout of that sketch?

A: Uh-huh.

Q: Could you point on the sketch to the area where the front door is. Do you recognize that?

(168)A: Yes, over here.

Q: Do you see the front door?

A: Yes.

Q: Can you indicate where you were seated at, where the area of the couch was that you were seated at. Is that indicated on the map?

A: It's not here but it looks like it would be here. The re(sic) was a cocktail table here and

the couch was behind the table and two lamps right here.

Q: On this sketch it indicates a component stereo set; there was no stereo set there; is that what you're saying?

A: No.

Q: So this sketch is incorrect?

A: Yes.

Q: Okay. You were seated here and this is the front door; is that correct?

A: Yes.

Q: And this is the front door that Mr. Williams came through and this was the front door that Miss Marsh was standing by and you were seated on the couch right here; is that correct?

A: Yes.

Q: Now, Mr. Williams came into the house and he said, "Where's the

money?" What happened after that?

A: The man that was holding my aunt took her upstairs.

(169)Q: That would be the first man that came into the house?

A: The first man, yes; he took her upstairs.

Q: Do you know what's located upstairs?

A: Bedrooms, bathroom.

Q: And where were you when they went upstairs?

A: I was downstairs on the couch yet.

Q: You were still sitting on the couch?

A: Yes.

Q: And your son was still sitting on the couch?

A: Right.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Where was Miss Marsh at this time when the man went upstairs?

A: Still at the door.

Q: And you say Mr. Williams walked through and went into the kitchen or something like that?

A: Yes, sir.

Q: What did you do when Mr. Williams went into the kitchen?

A: I tried to run out of the door with my son; I grabbed him and tried to run out of the door.

Q: Which door was this?

A: The front door.

Q: Is it the same door that Miss Marsh was by?

A: Right.

Q: What happened when you ran to the front door? Did you get out of the house?

A: No, she grabbed me.

TESTIMONY OF CYNTHIA KNIGHTON

(170) Q: Where did she grab you?

A: My shoulders.

Q: How did she grab you?

A:P She just grabbed me and held me, and I guess the other guy heard the noise and he ran back, you know, into the livingroom where we were.

Q: By the other guy, do you mean the guy that went upstairs?

A: No, Mr. Williams.

Q: He came from the kitchen out front?

A: Right.

Q: When she grabbed you did Miss Marsh say anything to you?

A: No.

Q: What if anything did Mr. Williams say when he came back?

A: He told us to get on the floor, lay on the floor.

TESTIMONY OF CYNTHIA KNIGHTON

Q: And where did you lay on the floor?

A: Between the couch and the table.

Q: On this sketch you're indicating right in this area?

A: Yes.

Q: You laid down with your son on the floor; is that correct?

A: Yes.

Q: And when you came up to Miss Marsh and she grabbed you by the arms, was she facing you or was her face turned away from you?

A: She was turned away from me at first, and when Mr. Williams came in I turned around so she was still holding me from the (171) back.

Q: So when she grabbed you how

close would you say you were to Miss Marsh?

A: I was touching her.

Q: Was there anything obstructing your vision from being able to see Miss Marsh's face?

No.

Q: At that time did she have a disguise on her face?

A: No.

Q: And were the lights still on in the livingroom?

A: Yes.

Q: Now, after Mr. Williams told you to lay down on the floor, what if anything did he do?

A: He was still just looking around and --

Q: Where was he looking around?

A: In the diningroom and the kitchen.

TESTIMONY OF CYNTHIA KNIGHTON

Q: What happened after that? What if anything did Mr. Williams do after that?

A: He went upstairs where the other people were.

Q: Where the first man that came in and Ollie Scott was?

A: Right.

Q: When he went upstairs where was Miss Marsh?

A: At the door.

Q: Did you have any conversation with Miss Marsh while you were laying on the floor and after Mr. Williams went upstairs?

(172)A: Yes, I did.

Q: What if anything did you say?

A: I asked her for a drink of water.

Q: What if anything did Miss Marsh say when you asked her for a drink of water?

A: She said no.

Q: At that time how many people were downstairs?

A: Three.

Q: You, Clarissa Marsh and your son?

A: Right.

Q: Did Miss Marsh have a weapon of any kind?

A: I didn't see any.

Q: What if anything was Miss Marsh doing by the door?

A: She would look out the peephole every now and then.

Q: When Mr. Williams went upstairs did Miss Marsh run outside, run out the door?

A: No.

Q: She stayed by the door; is that correct?

A: Right.

TESTIMONY OF CYNTHIA KNIGHTON

Q: How long was Mr. Williams and the first man upstairs?

A: I would say about five minutes.

Q: Was Mr. Williams up there for a period of five minutes?

A: No, he wasn't up there for five minutes; the other guy was up there five minutes.

Q: And during that time Miss Marsh made no effort to leave the (173) home?

A: No.

Q: Could you hear from where you were -- did you hear anything upstairs?

A: Yes, I could.

Q: What did you hear?

A: Noises like --

Q: What kind of noises?

A: Like drawers opening and closing, doors slamming.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Did you hear any conversation or any voices upstairs?

A: No. Just mumbling, you know. I couldn't tell what they were saying.

Q: What's the next thing that you observed?

A: They all came downstairs.

Q: By all of them, who do you mean?

A: The two men and my aunt.

Q: Mr. Williams, the first man and Ollie Scott; is that correct?

A: Right.

Q: When they came down where was Miss Marsh?

A: Still at the door.

Q: What if anything did the men do when they came downstairs?

A: The first man that came in had a paper bag and he gave it to Miss Marsh.

TESTIMONY OF CYNTHIA KNIGHTON

Q: What kind of a paper bag was it?

A: A grocery bag.

(174) Q: A regular kind of a shopping bag? Was it a big bag or was it a --

A: Uh-huh.

Q: Could you tell from where you were whether anything was in it?

A: Well, I could tell it wasn't empty.

Q: And what did Miss Marsh do with the bag?

A: She took the bag.

Q: Was there any conversation between the other man and Miss Marsh at that point?

A: No.

Q: He just came down and gave her the bag?

A: Right.

Q: Did Miss Marsh refuse the bag in any way?

A: No.

Q: Did she say, "Don't give me that bag."

A: No.

Q: Did the man have any weapon at that time?

A: He still had his gun.

Q: How about Mr. Williams, did he still have his gun?

A: He still had his gun.

Q: Now, when Mr. Williams first came in the house you said that he had his hand over his mouth; was he wearing any kind of a disguise other than having his hand over his mouth?

A: No, he didn't have a disguise on.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Was there anything covering his face at all?

(175)A: The first man, who was holding my aunt, took her down into the basement.

Q: And how did he take her down into the basement?

A: Well, he was still holding her, so he took her down holding her.

Q: He was holding her where?

A: By her arm.

Q: Did he say anything to your aunt?

A: No, he did not.

Q: And did he still have his gun?

A: Yes, he did.

Q: Then he just took her down the basement?

A: Right.

TESTIMONY OF CYNTHIA KNIGHTON

Q: When the other man took your aunt down the basement where were you?

A: Still laying on the floor.

Q: Where was Mr. Williams?

A: He was still in the livingroom.

Q: Where was Miss Marsh?

A: Still by the door.

Q: And after the other man left with your aunt how long did you stay in the livingroom?

A: Not even a minute.

Q: Less than a minute?

A: Less than a minute.

(178)Q: And what happened after that?

A: Williams told us to get up and to go in the basement.

Q: And what was Miss Marsh doing at that time?

A: She was still by the door.

Q: Did you see her doing anything by the door?

A: Looking out periodically.

Q: When Mr. Williams ordered you to go downstairs, what did you do?

A: We got up off the floor and went past him, he followed us.

Q: In terms of the basement and the area where Mr. Williams was and where you were, was he between you and the basement?

A: Yes, at that time.

Q: And when you got up were you facing Mr. Williams or were you turned a different way?

A: I was facing him.

Q: You had a chance to see his face again?

A: Uh-huh.

Q: When you walked by Mr. Williams how close did you come to Mr. Williams?

A: Well, I had to go past him to go down the stairs.

Q: Did you walk within touching distance?

A: Yes.

Q: And did you in fact get to the stairs where you walked down the basement?

A: Yes.

(179) Q: Did Mr. Williams still have his gun?

A: Yes, he did.

Q: And what was he doing with the gun as you were walking down the stairs?

A: He was pointing it, you know, behind us.

Q: Pointing it in which direction?

A: Towards us.

Q: Did you walk down the stairs and get into the basement?

A: Yes.

TESTIMONY OF CYNTHIA KNIGHTON

Q: And were there any lights in the basement?

A: Yes, all the lights were on.

Q: The lights were on?

A: Yes.

A: And when you got downstairs where was your son?

A: He was next to me.

Q: Did you see Ollie Scott?

A: Yes, I saw her.

Q: Where was she?

A: She was laying on the floor.

Q: Do you know where she was lying on the floor?

A: Yes, it was another little separate room without a door.

Q: Can you step down from the witness stand and show the area on this sketch where Ollie Scott was laying when you came down the stairs, these being the stairs.

TESTIMONY OF CYNTHIA KNIGHTON

A: Here.

(180)Q: You're indicating this separate room?

A: Yes.

Q: And where was she lying down in this room specifically? Was she behind these cabinets or in the corner --

A: Right here.

Q: Right there in the doorway?

A: Right.

Q: You may take the stand. Did you see the other man?

A: Yes, I did.

Q: Did you see if he had anything in his hands at that time?

A: Yes, he had his gun.

Q: What was he doing with the gun?

A: He was holding the gun. He was trying to get a blanket or canvass(sic) or something unraveled.

Q: And where was this blanket or canvas that you saw?

A: At that time it looked like it was on the table.

Q: Where was that table located?

A: In this same little room on the other side.

Q: The same little room that Ollie Scott was in?

A: Right.

Q: What did you do when you walked down the stairs?

A: I waslked(sic) over to the corner -- well not really a corner, but there was a cabinet in the corner so I walked over to the cabinet.

Q: And can you show on the map, on the sketch, where that (181) cabinet is?

A: Uh-huh, right here.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Indicating the cabinet on the left side of that sketch; is that correct?

A: Right.

Q: And what did you do when you got to that cabinet?

A: I crouched down on my knees.

Q: Can you show the Jury how you crouched down on your knees.

A: Like this.

Q: Where was your son in relation to you?

A: He was right next to me.

Q: On your right or on your left?

A: On my left.

Q: What was he doing? Did he crouch down, too, or what did he do?

A: Yes, he did.

Q: When you got downstairs and you crouched down, where was Mr. Williams?

A: He was standing, not directly in front of me, but kitty-cornered.

Q: In the basement or on the stairs?

A: In the basement.

Q: In terms of distance, how far was he from you?

A: Three feet.

Q: Did he have anything in his hands?

A: He had his gun.

(182) Q: What was he doing with the gun?

A: He was still pointing it towards us.

Q: Towards who?

A: Me and my son.

Q: What if anything happened after you crouched down?

A: Williams said, "Hurry up and tie them up," to the other man.

TESTIMONY OF CYNTHIA KNIGHTON

Q: What did the other man say, if anything?

A: He said, "We're going to have to hurt them."

Q: What's the next thing that happened when the other man said, "We're going to have to hurt them." What if anything did Mr. Williams say?

A: Nothing.

MR. HILL: I'll object to that conclusion; it's a fact that hasn't been established in evidence yet.

THE COURT: On what basis, Mr. Hill?

MR. HILL: He asked what did Mr. Williams said(Sic) after she repeated what someone else said; there's no evidence Mr. Williams heard what the other individual said.

Q: (By Mr. Kriscuinas) Where was the other man when he said

"We're going to have to hurt them."

A: He was still in the same room where my aunt was laying down.

Q: And you said you were in the area by this cabinet crouched down on the floor; is that correct?

A: Right.

Q: And Mr. Williams, you said, was some three feet away from you?

(183)A: Yes.

Q: Somewhere close to -- in the direction of the stairs?

A: Yes.

Q: When the other man said "We're going to have to hurt them," did he say it loud enough so that you could hear it?

A: Yes, I heard it.

Q: How did he say it? Did he yell it out or did he whisper it or how did he say it?

A: He said it in a normal tone. You know; not loud, not soft; just so you could hear it.

Q: Did Mr. Williams say anything.

A: No.

Q: Did you hear Mr. Williams say, "Don't hurt anyone."

MR. HILL: I'll object to the nature of that question. He can ask the witness -- he already has and he's already received that answer. He certainly can't put words in the mouth of the witness, your Honor. I object to the leading nature of the question.

MR. KRISCUINAS: Your Honor, I don't think that is leading because a leading question is a question which demands one answer. For instance. "You were wearing

a red coat, weren't you?" "Yes, I was wearing a red coat." The question was, "Did you hear him say anything like "Don't hurt them," yes or no?" And either she did hear him say that or she didn't hear him say that.

MR. HILL: I would still object to the form of the (184) question. The form that he used -- he received the answer to his question and obviously he didn't like that answer so he's trying to get another answer by suggesting an answer to her.

THE COURT: I don't think Counsel is suggesting an answer, Mr. Hill. I'll overrule your objection.

Q: (By Mr. Kriscuinas) Did Mr. Williams say anything to the effect of "Don't hurt anyone."

A: No, he didn't say anything.

Q: What is the next thing that happened after that?

A: After that I heard two shots.

Q: Where in relation to you did you hear those two shots from?

A: In the little small room where my aunt was.

Q: And was that --

MR. HILL: I didn't hear that answer, your Honor. Would you repeat that, Witness, please.

THE WITNESS: From the little small room where my aunt was.

Q: (By Mr. Kriscuinas) Who else was in that small room with your aunt?

A: Only the first man that came in the house; just him.

Q: And after the two shots were fired where was Mr. Williams?

A: Still standing kitty-cornered from me.

Q: And did you see the other man after you heard the two shots?

TESTIMONY OF CYNTHIA KNIGHTON

A: I saw him after he came over to me.

Q: Did he come out of the little room?

(185) A: Yes.

Q: Did you hear your aunt say anything?

A: No.

Q: After you heard the two shots did you make any effort to try to run away?

A: No.

Q: Why not?

A: Because there was a gun being held on me.

Q: By whom?

A: Williams.

Q: What's the next thing that the other man did?

A: He came to where we were, in the room we were.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Did you see anything in his hands at that time?

A: Yes, he had something in his hands.

Q: What did he have in his hands?

A: Something like a blanket.

Q: Did he have anything in his other hand?

A: His gun.

Q: What did he do after he had the blanket and the gun?

A: He kneeled down till he was like eye level to where I was.

Q: He knelt down the same way that you crouched and showed the Jury?

A: Yes.

Q: What if anything did he do with the blanket?

A: He held it in front of his gun.

(186)Q: Can you show the Jury how he did that.

A: He held it up in front, like the gun was here and over the gun but he could still see me.

Q: Now, when the other man knelt down and he held up the blanket was Mr. Williams still in the basement?

A: Yes.

Q: How far was he from you at that time?

A: Same spot; he hadn't moved.

Q: Did Mr. Williams say or do anything to stop this man from kneeling down in that position in front of you?

A: No.

Q: What's the next thing that happened? Did the other man say anything to you?

A: No, he didn't say anything.

Q: What's the next thing that happened?

A: He shot me.

Q: How many times did he shoot you?

A: Three -- I would say three.

Q: Where were you shot?

A: In my right hand, in my face and my arm.

Q: Can you show us where on your right hand you were shot.

A: Right through my hand.

Q: You're indicating -- is there a scar there?

A: Yes, there is.

Q: You're pointing to an area close to the wrist on your right (187) hand?

A: Uh-huh.

Q: You indicated that he shot you in the arm, also?

A: My arm was broken, so I suppose it was shot.

Q: Yes.

Q: Where are they on your arm? You don't have to lift up your sleeve or anything.

A: They're up here.

Q: You indicated also that -- did he also shoot you in the left hand?

A: My hand was damaged, the bottom part of my left hand, too.

Q: You're indicating the area by the small finger?

A: Yes.

Q: And that's the side of the hand; is that correct?

A: Yes.

Q: You say he fired one shot into your face?

A: Right.

Q: Where was it that the shot hit you in the face?

A: Over here.

Q: You're indicating on the right cheek?

A: Right.

Q: Did you suffer any other wounds?

A: Well, the bullet went through my face to the back of my head, so there's a wound back there, too.

(188)Q: The bullet exited the back --

A: No, it didn't exit it stayed there.

Q: After you were shot what is the next thing that you noticed or observed?

A: Well, my eyes were closed so I didn't see anything, but I could hear. I hear two little pings, you know -- my ears were ringing so I gathered they were gunshot wounds, also, but they

didn't sound like it because there was ringing in my ears.

Q: Did you hear any conversation between the men at all or did you hear the men do anything?

A: No.

Q: What's the next thing that you heard? Did there come a time when you opened your eyes?

A: Yes, after a few minutes I opened my eyes and I didn't see anybody.

Q: The men were gone?

A: They were gone.

Q: Did you see your son?

A: At that point, no, I didn't.

Q: What's the next thing that you did?

A: I got up, then I looked at both of them, you know; and I went to the telephone in the basement.

TESTIMONY OF CYNTHIA KNIGHTON

Q: You said that you got up and you looked at both of them. Who do you mean by both of them?

(189)A: I looked at my son and then I looked at my aunt.

Q: Where was your aunt?

A: She was still in the same room laying down.

Q: Was she moving at all?

A: No.

Q: Did you see your son?

A: Yes.

Q: Was he doing anything?

A: No. He just looked like he was half asleep but he didn't do anything.

Q: You went over to a phone in the basement and what did you do with respect to that phone?

A: I tried to call the police on it but I couldn't hold it.

TESTIMONY OF CYNTHIA KNIGHTON

Q: You couldn't hold the telephone?

A: No, I couldn't hold the telephone.

Q: What kind of phone was it?

A: It was a Trimline wall phone.

Q: Is it the kind that you dial on the wall or the kind that you dial --

A: In the hand.

Q: What did you do at that point?

A: I went upstairs to the bedroom and I used that phone. I was able to get on the floor and I called the police.

Q: When you got upstairs to the bedroom did you notice anything unusual about the condition of the bedroom?

(190)A: Well, yes, the drawers were out and everything was thrown around to the floor.

TESTIMONY OF CYNTHIA KNIGHTON

Q: And did you get hold of the operator of 911 or who did you call?

A: Yes, I called 911.

Q: Did there come a time when police officers came to the house?

A: Yes, they came.

Q: Where were you when the police officers came?

A: I was sitting on the couch in the livingroom.

Q: Did you ever go back down to the basement?

A: No.

Q: Now, Mrs. Knighton, I ask you to take a look at People's Proposed Exhibit Number One. Do you recognize what's in the photograph I hand you?

A: Yes, my aunt's house.

TESTIMONY OF CYNTHIA KNIGHTON

Q: I'll show you People's Proposed Exhibit Number Two; do you recognize what I've handed you in that photograph?

A: Yes, her couch, the livingroom and the front door.

Q: That's the couch that's in the livingroom?

A: Yes.

Q: And does that photograph also show the front door?

A: Yes.

Q: Is that the photograph of the area that you described on the sketch on the left of the blackboard where you indicated the couch, the front door?

(191)A: Yes, it is.

Q: Let me show you People's Proposed Exhibit Number Three which is a photograph; do you

recognize that photograph and can you identify it?

A: Yes, I can. That was where I was crouched in the basement.

Q: Is there a file cabinet in that photograph?

A: Yes, there is.

Q: Is that the same file cabinet that was behind you?

A: Yes, it is.

Q: And is there anything on the floor in front of the area of that file cabinet?

A: Well, it looks like a blanket.

Q: Is that the same blanket that you saw the man with the gun holding?

A: Yes, it is.

Q: Let me show you People's Proposed Exhibit Number Four which is on evidence tag 647524

and ask you to take a look at the contents of the bag on People's Proposed Exhibit Number Four. Do you recognize what this is?

A: Yeah, that's the same blanket.

Q: That's the same blanket that the man held in front of you and shot; is that correct?

A: Right.

Q: Let me show you People's Proposed Exhibit Number Five; do you recognize the photograph that I've handed you there? (192) What area is that?

A: The same area where I was crouched.

Q: is that a closer picture of the file cabinet?

A: Yes, it is.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Also, People's Proposed Exhibit Number Six; do you recognize what is depicted in that photograph?

A: Same area.

Q: And is that a photograph of the cabinet with the door open?

A: Yes, it is.

Q: Let me show you People's Proposed Exhibit Number Seven, which is also a photograph; can you identify what is in that photograph?

A: Yes, this is the bedroom where I made the phone call from.

Q: Does that also show the condition of the bedroom?

A: Yes.

Q: And what is that condition in that photograph?

A: Ransacked.

TESTIMONY OF CYNTHIA KNIGHTON

Q: Let me show you People's Proposed Exhibit Number Eight, which is also a photograph; do you recognize that photograph? What area does that depict?

A: The same room where I made the phone call from.

Q: And also People's Proposed Exhibit Number Nine; do you recognize that photograph?

A: Same room.

Q: Now, let me ask you about these photographs: Do all of these (193) photographs fairly and accurately depict the way that the things looked on the day that you saw them, October 29th, 1978.

A: Yes.

Q: And did there come a time when you were taken to the hospital?

A: Yes.

Q: And did there come a time when you were at the hopital that the police showed you some photographs?

A: Yes, they did.

Q: And did you pick out any photographs of the people that were involved in this robbery and shooting?

A: Yes.

Q: How many people did you pick out in the photographs?

A: Three.

Q: And them photographs themselves -- the photographs that the police showed you, do you recall how many photographs that you looked at?

A: Six or seven.

Q And were all the photographs of just one person or were there some photographs that had more than one person?

A: No, some had more than one person in them.

Q: Let's talk about the photographs that had more than one person; did you recognize any of the people in those photographs?

(194)A: Yes, I did.

Q: And how many people did you recognize there?

A: Two.

Q: And did you tell the police officers that you recognized the people?

A: Yes.

TESTIMONY OF CYNTHIA KNIGHTON

(People's Proposed Exhibits 10 and 11 marked for identification.)

Q: (By Mr. Kriscuinas) Let me show you People's Exhibit Number 10 which is a photograph; do you recognize the photograph that I've handed to you?

A: Yes.

Q: Is that the same photograph that the officers showed you -- one of the photographs that the officers showed you at the hospital?

A: Yes.

Q: How many people that are involed in the case are in that photograph?

A: Two.

Q: Which two are in that particular photograph?

A: The first man that came to the house and Clarissa.

Q: Let me show you People's Proposed Exhibit Number 11, which is another photograph; do you recognize that photograph?

A: Yes.

Q: Is that also one of the photographs that you picked out?

(195)A: Yes, it is.

Q: What photograph is that?

A: Williams.

Recorder's Court

(260) Detroit, Michigan

April 19, 1979

TESTIMONY OF BENJAMIN WILLIAMS

THE COURT: This is File 78-07257, the People versus Clarissa Marsh and Benjamin Williams. Trial in progress.

MR. HILL: Defendant Williams is ready, your Honor.

MR. WALKER: Defendant Marsh is ready, your Honor.

MR. KRISCIUNAS: The People are ready, your Honor.

THE COURT: Thank you, Gentlemen. Are you ready for the Jury.

MR. WALKER: Prior to bringing out the Jury, your Honor, there are a couple of things I would like to put on the record, if I may.

THE COURT: Very well, Mr. Walker.

MR. WALKER: May it please the Court,

for the record, the State has informed me that it wishes to have an officer read a statement that was made by the co-defendant in this case, Mr. Williams, that he denies making. My understanding is that -- and this alleged statement has been what hopefully is known as Bruttenized, but that even with that, given the fact that my understanding is that the co-defendant, Mr. Williams, will (261) not take the stand, there are certain inferences that are raised by this statement even in its altered form that would tend to incriminate my client, Ms. Marsh. Therefore, I would object formally to its introduction in this trial and my authority for that is of course the case of Brutten versus United States, found at 391 US 123. That particular case would apply to the case of Roberts v. Russell, 392 at 293. Also,

Michigan law is fairly clear on this, your Honor, and the problem is that if the co-defendant does not take the stand but the alleged statement is read in, I have no means then by which to cross-examine this statement or the alleged statement to clear up any discrepancies or anything that might incriminate my client, despite the fact that it has been edited. So I therefore make this for the record and object to its introduction in this trial.

THE COURT: What specific portions are you referring to, Mr. Walker?

MR. WALKER: I think the whole thing as a whole, your Honor. It seems to include my client and tends to incriminate her. And even with a curative instruction, even with some altering, I have no opportunity to cross-examine on this statement, and

therefore it does work some prejudice to Miss Marsh, and therefore I object for the record.

THE COURT: Thank you, Mr. Walker.

Mr. Krisciunas?

MR. KRISCIUNAS: Your Honor, first of all we would (262) like to put in the record the actual statement itself so that if any appellate court has to deal with it, they will have the opportunity to see the entire statement prior to it being Brutenized, and I would like to give a copy of the statement to the Court Reporter so that at this time he may incorporate that into the record.

THE COURT: Any objection, Mr. Walker?

Mr. Hill?

MR. WALKER: I understand that it's being done for appellate purposes, your Honor. I would just further add that

this statement, or alleged statement, as it stands, tends somewhat to corroborate the statement of the Complainant, the testimony of the Complainant, that there were some three people involved in this incident and that some of the things in here are not at all corroborated by any other evidence. Therefore, this statement is not cumulative and it is being used as primary evidence; and my fear is that this primary evidence then will be applied to my client as opposed to only the person who allegedly made the statement.

THE COURT: I think that was the type of thing that Brutten was addressing itself to, also.

MR. WALKER: Yes, your Honor.

THE COURT: Mr. Krisciunas?

MR. KRISCIUNAS: Therefore, there was no objection to the statement being

incorporated into the record, and I will (263) put it into the record at this time.

MR. WALKER: I have no objection to that unaltered statement, because for appellate purposes the higher court would have to see both of them to compare and to make a decision.

THE COURT: Okay, Mr. Walker.

Mr. Hill, anything?

MR. HILL: I would not object --

THE COURT: Well, for purposes of the separate hearing would you have any objection to the Court Reporter at this time reading the original statement into the record for appellate purposes?

MR. HILL: For appellate purposes, no.

MR. KRISCIUNAS: Thank you, your Honor.

THE COURT: At this time the statement will go into the record.

MR. KRISCIUNAS: I will also provide the Court Reporter with a copy of the statement as it has been Brutenized so that that can also appear in the record.

I would indicate that now that the statement has been Brutenized we have delated(sic) all references to the Defendant Clarissa Marsh in the statement, and in so doing I believe that we have prepared it in such a way that the statement can now come before the Jury.

I cite to the Court the cases of the People versus Ronald Smith, 27 Mich. App. 442, at page 444, where the defendant's statement did not inculpate the other co-defendants because the (264) trial court made deletions in the defendant's statement of all reference to the names of any co-defendants. In fact, the statement didn't show that there were any other persons involved in the commission

of the crime and in no way served to implicate the other co-defendants. I think that's exactly what we've done here. The statement, as it reads, talks about what Benjamin Williams did and what Kareem did, but makes no reference at all to what Clarissa Marsh did. And I would also cite to the Court the case of United States versus English, 501 Fed. 2nd, a case out of the Seventh Circuit, in which the agent who took the defendant's confession was able to testify in court after the Court instructed the jury on the limited admissibility of the statement, and in the course of the statement regarding the admissions, the agent did not mention any names except the defendant's, and did not describe nor mention any names. However, he did state that two other individuals were involved in the robbery. That statement, and the

admission of that, the admission by the defendant, was found to be proper by the Seventh Circuit. So I think we've done everything under the spirit of Bruten and to protect the rights of the Defendant Clarisa Marsh, and therefore I would ask that the statement be allowed into evidence in its Brutenized form.

THE COURT: May I see the statement.

MR. KRISCIUNAS: Yes, your Honor.

THE COURT: Mr. Walker, what was the case that (265) you cited?

MR. WALKER: That was Roberts v. Russell, 392 US 293, a United States Supreme Court case.

MR. KRISCIUNAS: Your Honor, I think also that originally the People's position was that rather than delete all references to Clarisa Marsh that all references to Kareem Martin would be labeled "Kareem Martin" or "Kareem", and

all references to Clarissa Marsh would be labeled something like I think the letter "A", or "John Doe Number One", and I find support for that position in the case of People versus Miller, 88 Mich. App. 210, a 1959 case, in which in each confession the names of any co-defendants were excised and replaced with John Doe Number One, Number Two or Number Three, as needed. Additionally, instructions were given that the confessions were to be used only in relation to the particular confessing defendant.

I submit that the final result that we have given the Court is a statement that was agreed upon between myself and Defense Counsel, Defense Counsel of course not waiving any objections to the admissibility of the entire statement. But it's a statement that we went over and he prepared a statement deleting

certain portions which he thought would be unfair, and I deleted certain portions which I thought to be unfair, and we agreed upon the portions that the Court has, notwithstanding Counsel's objection to the entire statement.

THE COURT: Mr. Walker, is that a correct statement?

(266)

MR. WALKER: Yes, your Honor. I never did waive any objections to that, of course, and I was just concerned, and I'm still concerned about the fact that the statement, even as altered and even with the curative instruction, still is the only evidence of certain elements of the crime, and therefore is not cumulative, and would be inadmissible under People v. Rollins, 33 Mich. App., page 1. So I think it would probably be appropriate at this time to renew my

motion for severence that I have made numerous times throughout the trial and pretrial motions.

THE COURT: What portions are you specifically referring to in the statement?

MR. WALKER: Well, the statement does contain certain events that occurred prior to entrance into the scene on Mendota Street, and those, in my opinion, constitute the only evidence of any kind of premeditation or intent, and it is not cumulative of other evidence, and therefore, under Michigan case law, this would not be admissible.

THE COURT: Mr. Krisciunas, do you have any argument on that particular point?

MR. KRISCIUNAS: No, your Honor, I believe that the arguments have already been made in the motions for severance and I'll stand by those arguments.

TESTIMONY OF BENJAMIN WILLIAMS

THE COURT: Very well. The Court will take about 10 or 15 minutes to look up the pertinent parts of the cases (267) Counsel has cited. I'll give you a decision as soon as I come back out.

(Short recess.)

(Whereupon, statement read into record by this Reporter as follows:)

October 30, 1978

11:40 p.m.

Sergeant Richard Davies

Sergeant Daniel McCarty

Benjamin Williams

B/M/18 dob 3/7/60, 2755 Lawley 892-6992

On Sunday evening, October 29, 1978, at about 6:30 p.m., I was over to my girl friend's house at 237 Moss, Highland Park, when I received a phone call from a friend of mine named Kareem Martin. He said that he had been looking for me and

James Coleman, who I call Tom. He asked me if I wanted to go on a robbery with him. I said okay, and he said that he'd be by and pick me up. About 15 or 20 minutes later, Kareem and Clarissa, who I call "KC", who is Kareem's girl friend, came by in his black Monte Carlo car. I got in the car and Kareem and Clarissa told me that we were going to stick up this crib where the lady knew them. Clarissa said that the place was a numbers house where she used to work and the lady knew her so there would be no trouble getting in because she owed her a hundred dollars and she would let them in. Kareem said that there would be over (268) $5,000 or 10,000 in the place. Kareem said that they would have to take them out after the robbery because they knew them. Kareem had a big silver gun and he gave me a long barrel .22 caliber

revolver. We then drove over to this house and parked the car across the street near the house. The plan was that I was supposed to wait outside until they got inside and then KC (Clarisa) was supposed to come out on the porch and let me know that Kareem had stuck the place up. Wait a minute, the plan was that I would wait in the car in front of the house until KC signaled me and then I would move the car down across the big street because they didn't want anyone to see the car. Okay, Kareem and KC went up to the house and went inside. A couple of minutes later KC came out on the porch and waived. I moved the car and walked up to the house. I knocked on the door and KC opened the door. As I entered Kareem and this older lady were in the dingingroom and this little boy and another younger woman were sitting on the

couch in the front room. I pulled my pistol and told the younger woman and the little boy to lay on the floor. Kareem took the older lady upstairs and he had a pistol also. I stayed donstairs with the two people on the floor and KC. After Kareem took the lady upstairs, I went upstairs and the lady was laying on the bed in the room to the left as you get up the stairs. The lady had already given KC two bags full of money before we had ever got upstairs and she had put them in her purse. Kareem had thought that she had more money and that's why we went (269) upstairs. Me and Kareem started searching the rooms but I didn't find any more money. Before Kareem took the lady upstairs, the lady was asking Clarissa, "Why are you doing this to me?" Clarissa didn't answer her as I recall. I came downstairs and then Kareem came down with

the lady. I said, "Let's go, let's go." Kareem said no. Kareem then took the two ladies and the little boy down the basement and that's when I left to go to the car. I went to the car and got in the back seat. A couple of minutes later KC came to the car. She got behind the wheel and drove the car around the corner from the house and parked on the big street. A couple of minutes later, Kareem came to the car and said he thinks that the girl was still living because she was still moving and he didn't have any more bullets. He asked me how come I didn't come down the basement and I said, "I wasn't doing no shit like that." They then dropped me back off at my girl's house in Highland Park and I was supposed to get together with him today and get my one-third share of the robbery after he had counted the money. That's all.

TESTIMONY OF BENJAMIN WILLIAMS

Signed, Benjamin Williams.
Completed 12:45 a.m.,
10/31/78.
Sergeant Richard Davis.
Sergeant Daniel McCarty.

THE COURT: Gentlemen, I've had a chance to review the cited cases, and under the case law I find there is authority for allowing the statement of Benjamin Williams with the deletions. (270) I also find that the deletions are extensive as compared to the original statement, and any mention whatsoever of co-defendant Marsh does not appear in the amended statement. Therefore, this statement will be allowed to be read to the Jury, with the understanding that the statement to be read is the deleted statement with the deletions as they exist and have been agreed to by Defense Counsel, with the understanding that

Defense Counsel's objection to the entire matter still remains. And I would caution the Prosecution not to elicit anything that has been deleted from the statement.

MR. KRISCIUNAS: From the officer who is reading the statement: is that correct?

THE COURT: That is correct. I would also caution Defense Counsel not to elicit anything from the officer relative to the deletions in that statement.

MR. KRISCIUNAS: I might indicate also for the record, your Honor, that the officer who will be reading the confession into evidence will be reading a Xerox copy that we have made the deletions on. Obviously, we couldn't delete anything from the original in the event, it has to be used at some later date. The copy of the original has been

placed in a folder so that none of the deletions will be visible to any members of the Jury, and I would ask Brother Counsel not to take the statement out of that folder for purposes of cross-examination so that the Jury won't see the deletions.

(284)

TESTIMONY OF DANIEL McCARTY

(Discussion off the record.)

THE COURT: Are we ready for the Jury, Gentlemen?

MR. KRISCIUNAS: Yes, your Honor.

THE COURT: Officer McCarty has been instructed as to the admission?

MR. KRISCIUNAS: Yes, your Honor.

THE COURT: Okay.

(Whereupon, at 10:56 o'clock a.m., Jury returned to courtoom.)

THE COURT: Good morning.

Do all Counsel stipulate that the members of the Jury are present and in their respective places?

MR. KRISCIUNAS: So stipulated, your Honor.

MR. WALKER: So stipulated.

MR. HILL: Defendant Williams so stipulates, your Honor.

THE COURT: Thank you.

TESTIMONY OF DANIEL McCARTY

Sorry for the delay, Ladies and Gentlemen. Mr. Krisciunas?

D A N I E L M c C A R T Y

sworn on behalf of the People, was examined and testified upon his oath as follows:

DIRECT EXAMINATION BY MR. KRISCIUNAS:

Q: Please state your full name, sir.

A: Daniel McCarty.

(285) Q: Where are you employed?

A: Detroit Police Department.

Q: What section are you assigned to?

A: Homicide.

Q: Any special section of that?

A: Squad Seven.

Q: And I want to direct your attention back to October 30th, 1978, at approximately 11:40 in

the evening. Were you at Detroit Police Headquarters at 1300 Beaubien?

A: That's correct.

Q: Did you see anybody at that time, sir?

A: I saw the Defendant, Benjamin Williams.

Q: Do you see him in court today?

A: Yes, I do, he's sitting at Counsel table with the maroon pants and white shirt.

MR. KRISCIUNAS: Let the record indicate the witness has identified the Defendant, Mr. Benjamin Williams.

Q: (By Mr. Krisciunas) When you saw Mr. Williams did you see him alone or with some else?

A: With Sergeant Richard Davies. He was also assigned to Squad Seven.

TESTIMONY OF DANIEL McCARTY

Q: Was the Defendant advised of his constitutional rights?

A: Yes, he was.

Q: How was he advised of his constitutional rights?

A: We used the standard Detroit Police Department notification (285) of rights. The Defendant was read the rights, given a chance to read it over himself, he initialed each right in the left-hand corner and he signed the sheets and indicated that he then understood his rights.

Q: Would you read to the Jury the exact rights which were read to the Defendant.

A: Number one, "I understand that I have a right to remain silent and I do not have to answer any questions put to me or make any statements.

Number two: "Any statement I make or anything I say will be used against me in a court of law.

Number three: "I have the right to an attorney, a lawyer, present before and during the time I answer any questions or make any statements.

Number four: "If I cannot afford an attorney, a lawyer, one will be appointed for me without cost by the Court prior to any questioning.

Number five: "I can decide at anytime to exercise my rights and not answer any questions or make any statements."

Q: Was the Defendant asked whether he understood these rights?

A: Yes, he was.

Q: And what was his reply?

A: He stated he did.

Q: And did he initial all of those rights?

A: That's correct.

(287) Q: And how did he initial those rights?

A: On the left-hand side of the paper next to each number, one through five, he initialed "BW".

Q: Did you determine whether or not the Defendant could in fact read and write?

A: He stated he could.

Q: How far did he go in school, sir?

A: He stated he went to 11th grade at Ecorse, Michigan.

Q: In fact he wrote that in his own handwriting in the remarks section?

A: Yes.

Q: Now, after he was advised of his constitutional rights was he asked whether or not he wished to make a statement regarding this case?

A: Yes.

Q: And what was his reply?

A: He indicated he did.

Q: And did he in fact make a statement?

A: Yes, sir, he did.

Q: Now, physically, how was the statement taken?

A: He gave us a narration of the facts and Sergeant Davies typed it in my presence.

Q: And after he typed the statement on a piece of paper,

was the Defendant given an opportunity to read over that statement to see if it was accurate?

(288)A: Yes, he did.

Q: And was he given the opportunity to make any changes or corrections in the statement?

A: Yes, he did.

Q: Did he in fact make any such changes or corrections?

A: He initialed I believe twice where there was a correction to be made.

Q: Now, after the paper was typed, after the statement was typed, the Defendant had an opportunity to read over that statement?

A: That's correct.

Q: And did he in fact sign that statement?

A: Yes, he did.

Q: Did you also sign that statement?

A: Yes, I did.

Q: And did Sergeant Davies sign the statement?

A: Yes, he did.

Q: Would you read please the statement that was made by the Defendant, Benjamin Williams, regarding this case.

A: It's dated october the 30th, 1978, 11:40 p.m., and Sergeant Richard Davies and my own name appear at the top. The Defendant's name is Benjamin Williams, black male, 18, date of birth of 3/7/60, lives at 2755 Lally, and has a phone number of 892-6992.

TESTIMONY OF DANIEL McCARTY

October the 29th, 1978, (289) at about 6:30 p.m., i was over to my girl friend's house at 237 Moss, Highland Park, when I received a phone call from a friend of mine named Kareem Martin. he said he had been looking for me and James Coleman, who I call Tom. He asked me if I wanted to go on a robbery with him. I said okay. Then he said he'd be by and pick me up. About 15 or 20 minutes later Kareem came by in his black Monte Carlo car. I got in the car and Kareem told me he was going to stick up this crib, told me the place was a numbe s house. kareem said there w ld be over $5,000 or $10,00 in the place.

Kareem said he would have to take them out after the robbery. Kareem had a big silver gun. He gave me a long barrelled .22 revolver. We then drove over to this house and parked the car across the big street near the house. The plan was that I would wait in the car in front of the house and then I would move the car down across the big street because he didn't want anybody to see the car. Okay, Kareem went up to the house and went inside. A couple of minutes later I moved the car and went up to the house. As I entered, Kareem and this older lady were in the diningroom, a little boy and another younger woman were

sitting on the couch in the front room. I pulled my pistol and told the younger woman and the little boy to lay on the floor. Kareem took the older lady upstairs. He had a pistol, also. I stayed downstairs with the two (290) people on the floor. After Kareem took the lady upsairs I went upstairs and the lady was laying on the bed in the room to the left as you get up the stairs. The lady had already given us two bags full of money before we ever got upstairs. Kareem had thought she had more money and that's why we had went upstairs. Me and Kareem started searching the rooms but I didn't find any money. I

came downstairs and then Kareem came down with the lady. I said, "Let's go, let's go." Kareem said no. Kareem then took the two ladies and little boy down the basement and that's when I left to go to the car. I went to the car and got in the back seat. A couple of minutes later Kareem came to the car and said he thinks that the girl was still living because she was still moving and he didn't have any more bullets. He asked me how come I didn't go down the basement and I said I wasn't doing no shit like that. He then dropped me back off at my girl's house in Highland Park and I was supposed to get

together with him today, get my share of the robbery after he had counted the money. That's all."

Both pages are signed by the Defendant, Benjamin Williams. This statement was completed at 12:45 a.m., on October the 31st, 1978. It was signed by Sergeant Davies and myself.

MR. KRISCIUNAS: I have no further questions of this witness.

THE COURT: MR. HILL?

MR. HILL: I have just one question.

CROSS EXAMINATION BY MR. HILL:

Did I understand you correctly when you said that there were initials beside the two pages that you read from, or when you

read that statement were you referring to something else?

Repeat that again.

I thought I heard you on direct examination say there were initials placed alongside of each page that you read from.

No, I meant constitutional rights, the five rights that were read to him.

MR. HILL: I have no further questions.

THE COURT: Mr. Walker, any questions?

MR. WALKER: I have no questions.

MR. KRISCIUNAS: Thank you, Officer.

(Witness excused.)

MR. KRISCIUNAS: At this time, your Honor, the People rest.

THE COURT: Thank you.

TESTIMONY OF DANIEL McCARTY

THE COURT: Ladies and Gentlemen of the Jury, at this time I'll give you an instruction. The prosecution has introduced evidence of a statement which they claim was made by the Defendant Benjamin Williams. Before you may consider any such out-of-court statement as evidence against the Defendant, you (292) must determine two things: First, you must find that the Defendant in fact made the statement as it was given to you. Obviously, words said to have been written or said by the Defendant should not be used against him unless he actually spoke or wrote those words. Only so much of the statement as was actually made by the Defendant may be considered as evidence against him.

Second, if you determine that the statement as made by the Defendant, you must further consider whether the

statement or any part of it is true. You should consider the facts and circumstances surrounding the making of the statement along with all the other evidence in the case, judging its truthfulness and deciding how much weight, if any, the statement deserves.

Should you accept the statement or any part thereof as true, you may then give it whatever weight you believe it deserves.

The statement of Co-Defendant Williams has been admitted into evidence aainst him only. I caution you that it may be used in considering only the guilt or innocence of Defendant Benjamin Williams. Under the rules already given to you, it must not be used or considered in any way against Defendant Clarissa Marsh. To do so would be most unfair and in violation of the oath that you took as

Jurors; just so you all understand that.

Do you rest, Mr. Krisciunas?

(293)

No.

Q: Is this the truth?

A: Yes.

Signed: Benjamin Williams

THE COURT: Is the defense ready to proceed?

MR. HILL: Yes, your Honor.

MR. WALKER: Your Honor, now that the State has rested I have some motions I would like to bring.

THE COURT: Very well.

MR. WALKER: I would ask the Court on behalf of Clarissa Marsh to direct the verdict in her favor, and particularly on Count III, that is the count of Assault With Intent to Murder. The elements of Assault With Intent to Murder, as I understand, your Honor, are that there must be specific intent, there must be an assault, and that assault, if successfuly(sic), would have resulted in

the death of the person assaulted. I would indicate to the Court that of course the Prosecution has the burden of proof of proving each and every element of each and every crime charged beyond a reasonable doubt.

We have seen conclusive evidence that Clarissa Marsh was not armed on October 29th, 1978. There is absolutely no evidence of any intent on her part to assault anyone with the intent to murder. It is also very clear from the evidence that she was not in the basement when the assault on Miss Knighton occurred; that in fact there is no evidence that she was even in (297) the house at that point.

Finally, I would indicate that the only action that was in evidence as to Miss Marsh, was a collision, if you will, with the complainant, Miss

Knighton, at the doorway. I specifically asked Miss Knighton, did Miss Marsh approach you. No. It was clearly a case of Miss Marsh standing at the door, the complainant charging the door and then colliding with her. There was no aggression on the part of Miss Marsh, and therefore I would state that there was no assault here. And I know that is what the State argued earlier as the basis for this charge of assault with intent to murder. So I would indicate that there is no intent shown, no specific intent. Certainly, she was not armed; certainly she was not in the basement, she was not in the house. There was no assault and she was not the aggressor.

And finally -- well, that's it, your Honor. I would ask that the Court direct a verdict as to Miss Marsh on the count of assault with intent to murder, that it not be submitted to the Jury.

MOTION FOR DIRECTED VERDICT

THE COURT: Thank you, Mr. Walker.

Is there anything further that you wish to bring out? Are there any other motions at this time?

MR. WALKER: Yes. I would also like to have the Court direct a verdict as to Miss Marsh on the two counts of felony murder.

Again, there is absolutely no showing, absolutely (298) none, of any malice on her part. There is no showing of specific intent. All we have in regard to that is mere presence. And of course, as the Court is aware, mere presence does not constitute a crime. There has been no evidence that any murders were part of any kind of -- if you will, of any plan, if there was indeed a plan. And certainly the intent of others cannot be ascribed to Miss Marsh.

MOTION FOR DIRECTED VERDICT

So therefore, I would also move that a directed verdict -- a verdict be directed in Miss Marsh's favor on the first two counts of felony murder.

THE COURT: Thank you, Mr. Walker.

Mr. Hill?

MR. HILL: Thank you, your Honor. Briefly, I would at this time move the Court to direct a verdict of not guilty as to Defendant Benjamin Williams, based upon what I consider the total lack of evidence that has gone into this as a result of the testimony of the one witness that has testified in this matter, Cynthia Knighton. Her testimony, as the Court recalls, clearly indicated that Defendant Williams, while there, did not surely participate in any assault upon her person, and certainly any assault upon the person of the deceased;

that he did not, according to her testimony, shoot his gun, he did not kill anyone, indeed, as I stated, he did not assault the person of Cynthia Knighton. And as has been pointed out by my Brother Counsel, since count III requires a specific intent, her testimony (299) even taken in light of the so-called confession that has been read into the record made by the Defendant Williams, this does not supply that necessary element in that particular count to constitute a case that the Jury can decide, for the reason that there are no facts from which inferences can be drawn to submit that going to the Jury. It would mean that the Jury would have to guess as to the innocence or the guilt of the Defendant, Benjamin Williams with regard to Count III.

With regards to Counts I and II, I would respectfully submit to the Court that the People have not sustained

their burden at this stage of the proceeding and shown that there was actually an armed robbery committed by the Defendant Benjamin Williams. While there might have been a larceny from a building or some other crime, they certainly haven't shown the elements necessary to constitute the crime of robbery armed. My recollection is that Cynthia Knighton did not testify that Benjamin Williams in any way threatened the security of people there for purposes of robbing either Mrs. Knighton or Mrs. Scott, and I would say that the elements of that particular crime, as they apply to Benjamin Williams, have not been sustained; and even though there might be some evidence which can be gained from this so-called admission made by the Defendant Benjamin Williams, I would say that it falls short of that insofar as

the People have argued that he aided and abetted, and for the reasons stated, I would move this Court to direct a verdict of not guilty with regard to (300) the three counts remaining in the criminal Information.

THE COURT: Thank you, Mr. Hill.

Mr. Krisciunas?

MR. KRISCIUNAS: Your Honor, in response to the motion for a directed verdict, at the close of the People's proof as a matter of law, and the Court must view the evidence in the light most favorable to the Prosecution. There must be no evidence from which the jury could reasonably infer the defendant's guilt in order to justify the taking the case from the jury.

In support of that proposition I cite the Court the case of People

versus Compton, 23 Mich, App. 42; People versus Watkins, 36 Mich. App. 380. The Court cannot weigh the sufficiency of the evidence or the credibility of the witnesses or the inferences to be drawn from the testimony. In support of that I cite the cases of People versus Abernathy, at 253 Mich. 583; People versus Camak, 5 Mich. App. 55; People versus Slater, 164 Mich. 166. The Court can only take the case from the Jury if it can say that viewing the evidence in the light most favorable to the people, it could not find guilt. The People's theory in this case is that both Defendants aided and abetted in the commission of the robbery and that their intent can be seen, if not from their words, from their conduct throughout the incident, and the intent to kill can be inferred from their conduct as well as

their malice. Clarissa Marsh specifically (301) stopped the victims from escaping; she took the money. I think that all of the surrounding circumstances of the robbery and her conduct can be inferred by the Jury to show the specific intent necessary to commit the crime of assault with intent to murder as well as the intent to kill necessary in first degree felony murder.

I think that it becomes a question of fact for the Jury and that it should be left for the Jury to determine whether or not she had that intent. And I think that if you look at the evidence most favorable to the Prosecution, a reasonable mind could find that she had the intent necessary and the malice necessary.

Likewise, the same thing applies to the Defendant Benjamin

Williams. Brother Counsel has stated that there is no evidence to show that he was involved in the robbery. But contrary to that, the first statement that was repeatedly made by the Defendant as he entered the house was, "Where's the money," and it was at that point that he had his gun out. And Walter Martin had a gun out, also. It was then at that point that the lady went upstairs -- Ollie Scott went upstairs with Walter Martin, and then Mr. Williams also assisted in keeping the victims in place. And that also, his conduct downstairs at the time of the killing, totally raises an issue of fact for the Jury as to whether or not he had the requisite intent to kill and whether he had the requisite malice to make him guilty of these crimes.

(302) Therefore, I would ask the Court to deny the motion for a directed verdict.

MOTION FOR DIRECTED VERDICT

THE COURT: Thank you, Mr. Krisciunas.

Mr. Walker?

MR. WALKER: Very briefly, your Honor. The Prosecutor has made a statement in regards to Miss Marsh on the assault with intent to murder; that the intent would be inferred from the act of the felony. So what he wants here is felony assault. He wants to be relieved of the responsibilities of showing each and every element of assault with intent to murder by saying well it occurred in the commission of a felony and he's trying to tie the whole package in, and there's no such thing in our law as felony assault. The State is never relieved from the obligation of proving each and every element of a crime unless designated by statute, such as the felony murder statute.

MOTION FOR DIRECTED VERDICT

THE COURT: I think it becomes a question of fact, and on the motion for a directed verdict, the Court must look at the testimony in the light most favorable to the Prosecution to determine whether or not there is testimony on all of the elements of the offenses, and based upon the testimony that the Court has heard, the Court is of the opinion that the motion for a directed verdict on behalf of Clarissa Marsh as to Counts I, II and III, and the motion on behalf of Defendant Williams on Counts I, II and III, should be and is hereby denied.

Are you ready to proceed?

MR. HILL: That's all.

You may cross-examine.

THE COURT: Mr. Krisciunas?

MR. KRISCIUNAS: I have no questions.

THE COURT: Mr. Walker?

MOTION FOR DIRECT VERDICT

MR. WALKER: I have no questions.

THE COURT: Anything further, Mr. Hill?

MR. HILL: I have no further questions.

THE COURT: Thank you, Mr. Williams, you're excused. (Witness excused.)

MR. HILL: At this time, your Honor, the Defendant Benjamin Williams would rest his case.

THE COURT: Thank you, Mr. Hill.

Mr. Walker?

MR. WALKER: I would like to call at this time Clarissa Marsh.

TESTIMONY OF CLARISSA MARSH

(307)

C L A R I S S A M A R S H,

sworn on behalf of Defendant Marsh, was examined and testified upon her oath as follows:

DIRECT EXAMINATION BY MR. WALKER:

Q: Would you give your name and address for the Jury, please.

A: Clarissa L. Marsh, 14287 Mark Twain.

Q: How old are you, Miss Marsh?

A: I'm 33 years old.

Q: What is the extent of your education?

(308) A: I have two-and-a-half years of business college.

Q: Are you married?

A: No, I'm divorced.

Q: Do you have any children?

A: Yes, I have two boys, Ronald, seven, and John, five.

Q: Do your boys live with you?

A: Yes, they did.

Q: You say they did?

A: They're now living in Ohio with my mother.

Q: Why is that?

MR. KRISCIUNAS: Objection, materiality.

THE COURT: How is that material, Mr. Walker?

MR. WALKER: I'll withdraw the question.

THE COURT: Very well, objection sustained.

Q: (By Mr. Walker) On October 29th, 1978, were you with a man who has been referred to here as Kareem Martin, a Walter Martin?

A: Yes, I was.

Q: Have you seen him since that date?

A: No, I haven't.

Q: Up to that point how long had you known the man we've been referring to as Kareem Martin?

A: Well, I met Kareem in November of 1977.

Q: And what were the circumstances of that meeting?

A: Well, I knew his sister and I went by his sister's place, we (309) were going shopping or something, I don't remember exactly what, but I went by the house. He was there and I was introduced to him and, you know, we started talking and started dating.

Q: This was in November of '77, I believe you said?

A: Right.

Q: Did that relationship with Mr. Martin develop further?

A: Yes, it developed further. We had more or less started going together in December; I guess that was shortly after Christmas.

Q: Did you ever have occasion to introduce Mr. Martin to your sons?

A: Yes, I did; that was around Christmas. In fact, it was Christmas Day. He had bought the boys some Christmas presents and I took them over to pick up their Christmas gifts and this is when they first met Kareem Martin.

Q: Did the relationship continue beyond that point?

A: Yes, it did. The relationship, you know, grew because of the way he was with the boys at

first. He was real good with the boys. He showed a lot of interest and concern in my boys.

Q: I take it that was important to you?

A: Yes, it was very important to me.

Q: Now, you continued to see Mr. martin; is that right?

A: Yes, I did.

Q: Did there come a time when you learned that he had a drug problem?

A: Yes, I did.

Q: And approximately when was that?

A: It was May or June; I'm not sure of which month but it was somewhere around -- I think it was June.

TESTIMONY OF CLARISSA MARSH

Q: And how did you happen to come by that information?

A: Well, we had left the house, the boys and I, going to the store; we came back a little earlier than Kareem had suspected, and me not knowing, I walked into the den in the house and he was shooting up.

Q: When you say shooting up, what do you mean by that?

A: He was -- well, his fix, whatever he needed, the amount of drugs, he was taking them then.

Q: And he was using a needle?

A: Yes, he was.

Q: Now, you said he was at your house?

A: Right.

Q: Where was that?

A: Kareem had moved into the house with the boys and I.

Q: Now, this was in May or June, I believe you said?

A: It was in June.

Q: What was your reaction to the discovery of this drug habit?

A: It threw me all off guard. I didn't know what to say or what to do. I just turned around and took the boys by the hand and (311) we got in the car and we kind of like rode around for a little so I could try and get my thoughts together because this is the first time I had ever had any, you know -- anything to do with anybody that had been on drugs.

Q: Now, did Kareem ever ask you for money during this period of time?

A: Yes, he did -- he asked me quite often for money, you know. Like sometimes he didn't have the money to cop his drugs for that particular day.

Q: And did you have the money to give him?

A: No, not always.

Q: Did you attempt to obtain the money for him?

A: Yes. I borrowed money from other people. I borrowed the money from my mother, my ex-father-in-law, my brother and friends of the family.

Q: Are you okay? Can you proceed? Would you like a drink of water?

A: Okay.

MR. WALKER: Could we take a five-minute break, your Honor, and allow Miss Marsh --

MR. KRISCIUNAS: I have no objection.

THE COURT: Fine.

Ladies and Gentlemen of the Jury, I'll ask you to step in the juryroom at this time for about five minutes.

(Whereupon, at 11:34 o'clock a.m., Jury excused from courtroom.)

(312) (Whereupon, Jury returned to courtroom at 11:42 o'clock a.m.)

THE COURT: Do Counsel stipulate that all the members of the Jury are present and in their respective places?

MR. KRISCIUNAS: The People so stipulate, your Honor.

MR. WALKER: So stipulated.

MR. HILL: Defendant Williams so stipulates, your Honor.

TESTIMONY OF CLARISSA MARSH

THE COURT: You may continue, Mr. Walker.

(Whereupon, Witness Clarissa Marsh resumed the stand.)

Q: (By Mr. Walker) Miss Marsh, I believe we were talking about a period in June of 1978 when you discovered that Kareem Martin was a drug addict.

A: Yes.

Q: Were there any other things about him at that point in time, around that point in time, that you noticed about him?

A: His attitude had changed; it became real aggressive and kind of overbearing. His attitude changed towards me and the boys.

Q: What do you mean when you say kind of overbearing?

A: Like he had a firm conviction that children should be seen and not heard, and it was a general practice around our house that, you know, the boys were allowed to play wherever they wanted to -- you know, it was our house, all three of us, you (313) know, and he, like, you know, didn't want the boys to play in the front room, if that's where they chose to play at, or if they wanted to go outside and play he wouldn't let them go out if he felt like he wanted them to stay in the house. And if they wanted to go to the neighbors house, if he had any argument with anyone in the block then they weren't allowed to go over there, or anything like that.

Q: Now, you said something about it was our house. What do you mean by that? Who owned the house on Mark Twain?

A: It's my house and it's my boys' house.

Q: Now, did you discuss these things with him, the drugs and his change of attitude?

A: Yes, we had talked about it several times. He had assurred (sic) me a couple of times that, you know, he was going to get off of drugs but it just seemed as though his habit kept getting bigger and bigger.

Q: Did you ever just say, "Hey, get out of my house."?

A: Three or four times. He refused to leave; said he wasn't going to go anywhere;

that this was his home; this is where he was going to stay.

Q: Now, you have an automobile, too, do you not?

A: Yes, I have a '77 -- I had a '77 black Monte Carlo.

Q: Now, did Kareem have a car?

A: No, he took over my car.

Q: What do you mean when you say he took over your car? You (314) mean borrowed it?

A: No. It had got to the point where if I wanted to go to the store, if I wanted to go wherever, I had to ask him if he was using the car, and if he wasn't using the car then he would let me use it.

Q: This is difficult, but I have to ask you this: Did this man every(sic) physically abuse you?

A: Yes, he snatched me around a couple of times, he slapped me. We had quite a few arguments.

Q: What was your state of mind like in June of 1978, given all the things you've just told us?

MR. KRISCIUNAS: Objection, materiality, your Honor, to her state of mind.

THE COURT: Mr. Walker?

MR. WALKER: Well, I believe it's relevant, your Honor. We're talking about her relationship with this man who is an accomplice in the incident of October 29th, and her attempts to rid herself of him and the control that he had over her, so her state of mind is very relevant.

THE COURT: I'll sustain the objection, but I will allow you to rephrase the question and lay a better foundation.

TESTIMONY OF CLARISSA MARSH

Q: (By Mr. Walker) Were you ever hospitalized in June of 1978?

A: Yes, it was June the 18th. I was hospitalized for attempt suicide.

Q: Did you tell any of your family about this attempted suicide (315) at that time?

A: I didn't. Some of my relatives, they came to the hospital; I think it was one of them that called my mother and got in touch with my brother and let them know that I had tried to kill myself. My mother came up the next day from Ohio.

Q: Why did you try to kill yourself, Clarissa?

A: I was depressed with the situation; I didn't know how to

get out. I had tried and I just didn't know what to do anymore and I was just tired. and the way things were going, the boys would be better off with my mother or with their father rather than, you know -- that's something I couldn't get myself out of.

Q: Now, you stated that Kareem asked you for money oftentimes?

A: Yes.

Q: And that you then borrowed that money from other people?

A: Right.

Q: Did there ever come a time when he himself went to your friends to borrow money on your behalf or on his own behalf?

A: Yes.

MR. KRISCIUNAS: Objection, your Honor, unless the witness was present at those times. I'll object to any hearsay, your Honor.

THE COURT: Sustained.

Q: (By Mr. Walker) Were you ever present -- did you ever borrow money from people at his orders?

(316)A: Yes, I have, on quite a few occasions.

Q: And did there come a time when you borrowed money from your mother?

A: Yes.

Q: And only on one occasion?

A: At least three or four times I borrowed money from my mother and she has wired it to me at the Western Union Office and we'd go down to get it, and as

soon as I'd go in and get it he'd take the money to go get his fix.

Q: Did you borrow money from other relatives besides mother?

A: Yes, I borrowed money from my ex-father-in-law, I borrowed money from my ex-husband, I borrowed money from my brother, I borrowed money from friends of the family, people that I knew.

Q: Did your mother ever ask you about why you kept borrowing all this money?

A: Yes, and I just told her I needed the money for the boys, you know -- you know, just for me and the boys; that was always the excuse I used.

TESTIMONY OF CLARISSA MARSH

Q: Let's go on now. In the summer of 1978 did the situation between you and Kareem change in any way during that period of time?

A: I'm sorry, what did you say?

Q: The period of time between June and October, when this crime occurred, were there changes in the relationship between you (317) and Kareem during that period of time?

A: Yes, it just kept on getting worse and worse and worse, and he just kept, you know -- well, I guess he just needed it for his fixes, you know. And like I had borrowed, you know -- I borrowed money from everybody I could. I was trying to pay people back and was still borrowing.

TESTIMONY OF CLARISSA MARSH

Q: Now, prior to October 29th, 1978, did you know a woman named Ollie Scott?

A: Yes, I did.

Q: How did you know her?

A: I used to work with her.

Q: Did you ever borrow money from Ollie Scott in the summer of 1978?

A: I borrowed money then and prior to that.

Q What amounts, do you remember?

A: Fifty, a hundred, twenty-five.

Q: Mrs. Scott lent you this money willingly; is that correct?

A: Yes.

Q: Did you have, prior to October 28th or 29th, 1978 -- aside from the borrowing of the money -- did you have a conversation with her? Did you ever talk with Ollie Scott?

A: Yes, we talked quite a few times. Most of the time I was calling her to tell her that I didn't have the hundred dollars that I owed her; that I would get it back to her just as soon as I got it, and that was just to let her know (318) that I wasn't trying to, you know, not pay her back the money.

Q: Now, did you have occasion to go to the hospital in October of '78?

A: No, I didn't go to the hospital. What had happened is that they had walked into the house on me, I thought everyone was gone, and I had taken about 40 or 50 Valiums and they had walked in as I was throwing the bottle away. And

so they started giving me mustard and trying to make me throw the pills back up from my stomach.

Q: So this was a suicide attempt on your part?

A: Yes.

Q: Why did you feel that you had to commit suicide?

A: Same old thing except it was just worse. It seems like I was in deeper and I just didn't know how to get out.

Q: I'd like to focus, if we may, on the date of October 29th, 1978; that was a Sunday, was it not?

A: Yes, it was.

Q: What happened? Could you relate what occurred early in the day that day.

A: Well, we had all got up, I fixed breakfast for the boys, and we got dressed and prepared to go shoping to get me a pair of slacks and a couple of pair of pants for the boys.

Q: When you say we, who are you referring to?

(319)A: The boys, me and Kareem.

Q: Did you go shopping?

A: Yes, we went out to Eastland Shopping Center, and while I was out there I lost my wallet.

Q: What was contained in that wallet, if anything?

A: Kareem's money, money order to pay the telephone bill, a little bit of grocery money and my charge plates and identification.

Q: When you say Kareem's money, what do you mean --

A: His cop money, the money he needed to get his fix with.

Q: Did you tell him that you lost the wallet?

A: Yes, I told him.

Q: And what was his reaction?

A: He was real upset, you know, because like he didn't have his cop money and that was it that I had lost in my wallet; and he was upset and like he tried to calm himself down thinking that maybe my wallet was still at home, that maybe I hadn't put it in my purse. And so we left there and we went back to the house and we looked for the wallet and the wallet wasn't here. And then he really got mad because he knew it wasn't around and that he didn't have

his cop money. And he was already sick.

Q: Did you attempt to recover that wallet?

A: Yes, I've kept constantly calling out to Eastland Security trying to see if the wallet had been turned in, and you, know, (320) just kind of like hoping that somebody had just turned it back in. I think the last time I called was about four o'clock, just before the mall was to close up, and they says it hadn't been turned in.

MR. KRISCIUNAS: Objection, hearsay.

THE COURT: Mr. Walker?

MR. WALKER: I'll withdraw that.

THE COURT: Sustained.

Q: (By Mr. Walker) Did you make attempts then to replace the money that Kareem needed?

A: I had to.

Q: What do you mean you had to?

A: Nobody in here really knows how he was like when he was angry, you know, but he was really upset because, like I said, he was getting real sick and he was hurting and he was getting, you know, like he was getting all uptight about it. So I called my brother and he said --

Q: What's your brother's name, please?

A: Clarence Jackson. he said he didn't have it because he had to pay his house note. I tried

to call my father-in-law but he wasn't there. And then --

Q: What is his name, please?

A: Reverend Charlie Marsh.

Q: Did Kareem suggest any ways that you should get that money?

A: He said I was going to have to borrow the money because he (321) didn't have any way of getting any money. And so he just kept on talking, kept on hounding at me to call other people. Most of the people I called, it was Sunday afternoon, you know, and they were out. So we were just sitting there and he said, "What about Ollie?" And I said, "What about her?"

Q: When he said, "What about Ollie," who did you think he was referring to?

A: He was referring to Ollie Scott.

Q: Go on.

A: And I asked him, "I says, "What about Ollie?" And he says, "Ollie has lent you money before, she'll lend you money this time," you know. And I said, "I already owe Ollie a hundred dollars and I'm not going to go over there and ask for no more money," you know. And he said I was going to go ask her and he was going to go with me to make sure I did, so I didn't come back with no little bald-assed lie about she didn't have it or she said no.

Q: So did you leave your house to go borrow this money from Ollie Scott?

A: Yes, we left the house.

Q: Who left the house?

A: Well, I had sent my boys down the street; they were invited to a Halloween party and they were down the street. So Kareem and I left the house.

Q: And did you go straight to Ollie Scott's house?

(322)A: No, we went by and picked up a friend of his.

Q: What happened when you arrived at this friend of his house?

A: He got out of the car and went up to get him.

Q: Then what happened?

A: I climbed in the back seat of the car and we drove off over to Ollie's house.

Q: Now, how many people were in the car at that point?

A: There were three.

Q: Did you hear any conversations in that car about any kind of robbery?

A: No, I was sitting in the back and the radio was on and the speaker was right in my ear. I knew that the(sic) were talking but what they were talking about, I wasn't even aware of it.

Q: So the three of you proceeded to where?

A: Over to Ollie's house.

Q: When you arrived did Ollie Scott let you in the house?

A: Yes, she let me in the house.

Q: Who went in the house?

A: Kareem and I.

Q: Did Ollie inquire as to why you were there?

A: Yeah, I told her that I came by to see if I could borrow some money.

Q: You heard the testimony of Cynthia Knighton and that she overheard a conversation to the effect that you were there (323) to pick something up? Do you remember that?

A: Right. After I -- it was right after I had asked Ollie to lend me the money that Cynthia and the baby came down the stairs and I was talking about picking up something, I don't remember the exact words, but I do remember saying something else about picking up something.

Q: What did you mean? What were you there to pick up?

A: I was there to ask for a loan and pick it up.

TESTIMONY OF CLARISSA MARSH

Q: Where were you seated when you first came into the house, or were you seated? What did you do when you first came into the house?

A: Well, when we first came into the house I was kidding with Ollie; she had a bruise like under her eye and I was sort of kidding her about it and I said, "Who popped you in the eye," and --

MR. KRISCIUNAS: Objection.

THE WITNESS: Anyway, Ollie sat down on the couch and I sat next to her.

Q: (By Mr. Walker) Now, you see this sketch. Miss Knighton testified from this sketch; it's a sketch of the premises on Mendota, Ollie Scott's

house. Now, this is the couch. Who was on this couch when you first came in?

A: Ollie was down at the end closest to the fireplace.

Q: So she was on this end of the couch?

A: Right.

(324) Q: Was there anyone else on the couch?

A: No. I was directly next to her.

Q: Then there was no one else --

A: Oh, yes, Cynthia Knighton and her son Koran were on the couch when they came downstairs. Cynthia sat next to me and the baby was right next to her.

Q: So that there were four people sitting on the couch?

A: Right.

Q: Where was Kareem Martin?

A: He was across the room in a chair.

Q: Would that be this chair?

A: Yes.

Q: So here's the couch, here's the chair?

A: Right.

Q: Was he seated in this chair?

A: Yes, he was seated.

Q: What happened next?

A: Ollie and I were still talking and then, like I looked -- I was talking to Ollie, she had turned her head, and I noticed the expression on her face and I looked at her and I turned around and here Kareem had pulled a gun out.

Q: What were you thinking when he pulled the gun out?

A: I didn't know what was going on. I sat there and he kind of like, you know -- when he pulled it out he kind of like fanned it a little bit and I just kind of got up and walked (325) over -- walked away from the couch and stood over there by the door.

Q: Why did you go over to the door?

A: I don't know. Like I said, I just kind of like stood up and went to the door.

Q: Did you have occasion to look out that door?

A: Yes, I looked out the door.

Q: Why did you look out the door?

A: Then I was looking to see where the car was.

Q: Why were you looking to see where the car was?

A: I don't know. I didn't know what was going on and I just looked out to see where the car was. I didn't know what to do.

Q: Did you feel free to leave at that time?

A: No.

Q: Then what happened, if you remember?

A: Somebody came to the door, the doorbell rang, Kareem asked who was at the door and I just turned around, something like a reflex or something to look out the door, and I saw that it was the friend that he had went to pick up.

Q: What were you thinking at that time?

A: I was thinking that maybe this was the way, like they wanted

to leave, that they had somewhere to go and it was taking too long and it would be an excuse, you know, to just go.

Q: So did you open the door?

A: Yes, I opened the door.

Q: And did that other man then come in?

A: Yeah, he came in.

Q: What happened after that, if you remember?

A: I don't know; it was just -- I know they went in the diningroom. And Kareem took Ollie upstairs, the friend, he followed up, and then they were right back downstairs.

Q: During this time did you try to escape or get out of the house?

A: No, I didn't try to get out of the house.

Q: Why not?

A: I was scared, I didn't know what to do. I didn't know whether to run or what. I was just standing there staring at the wall. I didn't know what to do.

Q: Did you have a gun?

A: No.

Q: Did you have any weapon at all in your hand?

A: No.

Q: Where were you during the time that the other people were walking around the house?

A: Standing at the door.

Q: Did you ever leave this area of the door?

A: No.

Q: What happened when the people came downstairs from the

upstairs and back into the livingroom, or did anything happen (327) in the meantime?

A: Well, I was standing at the door, I was just standing there looking at the wall, the wall directly in front of the door, and Cynthia Knighton jumped up and ran for the door, and I was standing there, you know --

Q: Where were you standing in relation -- where did she jump up from, first of all?

A: She was laying on the floor between the couch and the coffee table.

Q: She was lying right here?

A: Right.

Was there anybody else lying there?

A: Yes, her son.

Q: Which direction, if you know -- do you know which direction she was facing on --

A: She was facing towards the fireplace.

Q: So her head would have been in this direction away from the door; right?

A: Right.

Q: Did you have eye contact with her at all or could you see her?

A: Not that well; she was laying on the floor, and the way I was standing I could see, you know, her feet.

Q: Were you even watching her?

A: No, I wasn't paying any attention to her. I was just (328) standing there staring at the wall.

Q: What were you thinking at that time?

A: How I was going to get out of there.

Q: Now, she made a rush to the door; now what happened, if you remember?

A: I was just standing there, you know, and I was just staring at the door trying to figure out what to do, and the next thing I know she was right there at me, you know.

Q: Did you put your hands out?

A: I probably did, I don't know. It startled me when she -- you know, she was right there on me and I wasn't really paying any attention.

Q: Did you grab her?

A: I might have, I don't know. I think I did.

TESTIMONY OF CLARISSA MARSH

Q: Were you moving out this way at all?

A: No, I wasn't.

Q: You were standing at the door?

A: Right.

Q: Cynthia Knighton was moving which way?

A: Well, she just got up, I guess -- when I saw her she was standing right in front of me, still moving, you know.

Q: Did she have her son with her?

A: From what I remember, I think he was still sitting on the floor.

Q: Now, did there come a time -- okay she's at the door; then (329) what happened?

A: Kareem's friend came from out the diningroom and made her get back on the floor.

TESTIMONY OF CLARISSA MARSH

Q: Did you ever say anything to her?

A: No.

Q: Did you ever holler out to anyone?

A: No.

Q: Now, you say this other person came running out toward her; do you know where he was in the house at that time?

A: He was in the dingingroom.

Q: So he was in this area?

A: Yes.

Q: From where he was could you see him in the diningroom?

A: I could see, not his whole frame, but I could see part of him.

Q: In the meanwhile where was Kareem during this time?

A: I don't know.

TESTIMONY OF CLARISSA MARSH

Q: Did there come a time when Kareem came back into the livingroom or back into this area?

A: Right. He came from downstairs and he handed me a bag. I sat it down on the floor next to the end table.

Q: This end table?

A: Right.

Q And did you have any other parcels with you at that time?

A: What did you say?

(330)Q: Did you have any other parcels in your hand?

A: No, I didn't have anything in my hand. I did take a purse with me when I went in. It was sitting on the coffee table.

Q: Then what happened, if you remember?

A: After he came down and handed me this bag, he took Ollie into the kitchen towards the basement.

Q: Was there anything ever said upstairs by anyone about anyone being hurt, being shot and killed?

A: No.

Q: Then Kareem walked towards the kitchen area with Ollie Scott?

A: Right.

Q: What about the other people in the house, do you know?

A: His friend was in the same area he was in, around the dingingroom-kitchen area, and Cynthia and the baby were laying there on the floor.

Q: Did there come a time when they left?

A: Yeah, his friend came back and told them to get up and come and go down the basement.

Q: Did you watch them proceed out of the livingroom?

A: Yes, I saw them walk out of the livingroom into the diningroom.

Q: Then what happened?

A: I snatched up my purse and left.

Q: What did you do with the bag that they handed you with the (331) money?

A: I had put that on the floor when he first handed it to me, right on the floor next to the end table, and I just got my purse and left.

Q: Where were you going?

A: I don't know because I just had to get out of there. I didn't

know where the car was and I just figured maybe if I could get up to Grand River I could maybe catch a ride to get to my boys.

Q: So what happened when you left the house?

A: I went up Mendota towards Fullerton, across Fullerton, and after I crossed Fullerton I saw my car sitting there on the other side of Fullerton and Mendota.

Q: Then what did you do?

A: I got in the car and I drove off and I went and picked up my boys and then I just rode around. I didn't know where to go.

Q: Were the boys with you then?

A: Yes, they were.

Q: How long a period did you ride around?

A: For a long time. I rode around --

Q: Approximately what time was it that you picked up the boys; do you have any idea?

A: It must have been about maybe 8:00, 8:15; I'm not sure of the time exactly.

(332)Q: They kept asking questions and I told them to just be cool, you know, we're going to go home in a minute, you know. Mommy's got something she wants to do; she's got some thinking she wants to do. So eventually they went to sleep because they were tired; they had went to a party, you know.

Q: So you continued to drive around with the boys?

A: Right.

Q: Did you stay -- did you ever stay anywhere that night or did you drive around all that night?

A: Finally, I was so tired I stopped and I called my brother and asked him to meet me at the Crown Motel to get me a room.

Q: Why the Crown Motel?

A: Well, that's the motel my mother would stay at a lot of times when she came up to visit, and I knew which one she was talking about.

Q: Where is that located?

A: It's on Woodward Avenue.

Q: Did your brother respond to your call?

A: Yes, he came. He met me at the, you know, Crown Motel, and he was asking me --

MR. KRISCIUNAS: Objection, hearsay, to what he said.

(333) THE COURT: Sustained.

Q (By Mr. Walker) Why did you call him to check into a motel?

A: I told you I lost my purse, my wallet, and I didn't have any identification; I couldn't get a room there without identification. So I had to get him, you know, to get the room for me.

Q: So he came out then?

A: Right.

Q: Did he register you in a room?

A: Yes, we did.

Q: Did the boys stay with you then?

A: No, I sent them on with him because I didn't know exactly what I was going to do, and, you know, I just wanted some

time where I could just think for awhile.

Q: Did there come a time when you discovered -- when did you first learn that someone had been murdered at the Mendota address?

A: That early morning news on TV.

Q: And when you heard that did you know what they were talking about at that time?

A: I recognized the area they was talking about, so I just assumed that that was it, you know.

Q: Upon hearing that somebody had been murdered at this house what did you do?

A: I started making arrangements to get my boys somewhere so (334) that my mother could pick

them up so I could come and turn myself in.

Q: And how did you go about arranging to turn yourself in?

A: I had called Kareem's sister Jody, and if she knew an attorney, and so she called you for me on her "call waiting" phone, and we talked and made arrangements -- she made arrangements for me to come over to your house so that you could bring me in.

Q: And you did come over to my house, didn't you?

A: Yes, I did.

Q: And then what happened?

A: The boys were still with me --

Q: Now, the boys, you had dropped the boys off and you had given them to Clarence earlier. What

do you mean that they were still with you then?

A: Well, I had went back and got them because my brother said that he had some things that he had to do and as far as he knew, all it was about was that Kareem and I had had another argument and that I just didn't want to go back home. He didn't know that I was involved in this.

Q: Okay. About what time of the night was it that you came to my place, if you remember?

A: I guess it must have been about eight; I don't even know what time it was.

Q: Then what happened?

(335)A: Well, I was there and you called down and talked to

Sergeant Harris and told them that I wanted to turn myself in.

MR. KRISCIUNAS: Objection, hearsay.

THE COURT: Sustained.

Q: (By Mr. Walker) You were there while I was talking to him?

A: Yes, I was.

Q: So you heard me talking to him?

A: I heard you talking to Sergeant Harris.

Q: Then what happened?

A: You put the boys in a cab and sent them over to Josephine Martin's house so that they could be there for my mother to come and pick them up the next day when she got here.

Q: And then what?

A: Then you brought me in, you

brought me down to 1300 Beaubien.

Q: Clarissa, when you went to that address on Mendota on October 29th, did you have any intentions of robbing anyone?

A: No, I had no intentions of robbing anyone.

Q: Did you have any intentions of killing anyone?

A: No, I had no intentions of killing anyone?

Q: Did you know that Kareem Martin or anyone else was armed that day?

A: No, I didn't.

Q Have you seen your boys since that night that we put them in a cab?

MR. KRISCIUNAS: Objection, materiality.

(336) THE COURT: How is that material, Mr. Walker?

MR. WALKER: I'll withdraw the question, Your Honor.

Q: (By Mr. Walker) You've been incarcerated in the Wayne County Jail since that time?

A: Yes, I have.

MR. KRISCIUNAS: Objection, your Honor. The only purpose in that is to elicit sympathy from the Jury for this witness. There is no materiality; it has nothing to do with the crime itself or the reasons why the crime was committed. It has no other reason but for that purpose, to try to get sympathy.

THE COURT: Sustain the objection.

MR. WALKER: I have no more questions at this time.

TESTIMONY OF CLARISSA MARSH

MR. KIRISCIUNAS: Your Honor, I think that my cross-examination might be rather lenghly(sic). I think we are close enough to go to lunch.

THE COURT: I was thinking that, also, Mr. Krisciunas.

THE COURT: Ladies and Gentlemen of the Jury, at this time the Court will take a lunch recess. I'll ask you not to discuss the case among yourselves and be back at two o'clock.

(Whereupon, at 12:19 o'clock p.m., Jury was excused from courtroom and luncheon recess was taken.)

(337)

AFTERNOON SESSION

2:15 o'clock p.m.

THE COURT: Gentlemen, anything prior to beginning?

MR. KRISCIUNAS: No, your Honor.

MR. HILL: No, your Honor.

MR. WALKER: No, your Honor.

THE COURT: Very well.

(Whereupon, the Witness Clarissa Marsh resumed the stand and testified further upon her oath as follows:)

THE COURT: Miss Marsh, you're still under oath.

(Whereupon, at 2:16 o'clock p.m. Jury returned to courtroom.)

THE COURT: Will Counsel stipulate that all the members of the Jury are present and their respective places?

MR. KRISCIUNAS: The People so stipulate, your Honor.

MR. WALKER: Defendant Marsh so stipulates.

TESTIMONY OF CLARISSA MARSH

MR. HILL: Defendant Williams so stipulates.

THE COURT: Thank you.

You may proceed.

CROSS EXAMINATION BY MR. KRISCIUNAS:

Q: Miss Marsh, you are living on Mendota; is that right?

(338)A: No, I live at 14287 Mark Twain.

Q: I'm sorry. How long have you been living at that address?

A: About three years.

Q: Three years?

A: Right.

Q: And during the last year or so Kareem had moved in with you; is that correct.

A: That's correct.

Q: What kind of a house did you live in?

A: I live in a two-family flat.

Q: There was another family who lived upstairs.

A: Yes, there was.

Q: And you lived downstairs?

A: Correct.

Q: That wasn't your house, was it?

A: My mother had bought the house for me; we just hadn't had the deed changed over into my name.

Q: Isn't it true that you were renting there?

A: Well, you can call it renting but I didn't have to pay any rent. I just took the rent from the upstairs flat and paid the house notes with it.

Q: Now, you'd known Ollie Scott for how long?

A: I guess maybe two years.

Q: Where did you meet her first?

A: We used to work together.

Q: Where did you work together?

(339)A: In the numbers office.

Q: Where is that located?

A: All over the city.

MR. WALKER: I'll object, your Honor, it's not relevant.

MR. KRISCIUNAS: It just goes to the credibility of the witness, your Honor.

MR. WALKER: Well, it may involve a question, or some other legalities here.

THE COURT: I'll sustain the objection.

I believe the answer was several places around the city, wasn't it?

MR. KIRISCIUNAS: Right. I'll withdraw that question, your Honor.

Q: (By Mr. Krisciunas) But you worked with her, is that correct?

A: Right.

TESTIMONY OF CLARISA MARSH

Q: Did you ever work with her at her house?

A: No, I didn't.

Q: What type of work did you do? Were you working for her or with her?

A: With her.

Q: What type of work did you do with her?

A: We just ran up the tickets for the day and paid hits.

Q: And Mrs. Scott was still in numbers; isn't that right?

(340)A: Yes.

Q: And in October of '78 were you still running numbers with her?

A: No, I wasn't.

Q: When did you stop?

A: It was around April or May.

Q: Of 1978?

A: Yes.

Q: And you said there came a time when you started borrowing money from people; is that correct?

A: That's correct.

Q: Did you ever borrow money from Clarence Jackson?

A: Yes, I borrowed money from him.

Q: Is he your brother?

A: Yes, he is.

Q: Is he in court today?

A: He's not in the courtroom right now, no.

Q: He's in the building today; is that correct?

A: Yes.

Q: How long had Clarence Jackson been living in the city?

A: He's been here maybe five or six years.

Q: Did you borrow money from any other relatives?

A: Yes, I borrowed money from my father-in-law.

Q: What's his name, please?

A: Reverend Charlie Marsh.

(341)Q: Is he here today?

A: He's in the building, yes.

Q: Did you borrow money from anybody else?

A: I borrowed money from my mother.

Q: Is she here?

A: She's in the building.

Q: What's her name, please?

A: Elizabeth Jackson.

Q: When did you first start borrowing money from them?

A: Shortly after I stopped working.

Q: When did you stop working?

A: It was around April or May. I don't remember which month it

was but it was probably around the last of April or the first of May.

Q: From April or May of '78 until October of '78 you hadn't worked; is that correct?

A: No, I was on ADC.

Q: Mr. Martin, was he working?

A: He worked off and on.

Q: Were there any other relatives that you borrowed money from?

A: I tried to borrow money from my sister-in-law.

Q: What was her name?

A: Her name is Anita Moore.

Q: The period of time that I'm talking about is sometime after April of '78.

A: Right.

(342)Q: Did you ever borrow money from her?

A: Well, she has tried to get the money that I've asked for.

Q: Is she present in court today?

A: Yes, she's in the courtroom.

Q: Any other relatives?

A: My ex-husband.

Q: What's his name?

A: Ronald Marsh.

Q: Is he in court today?

A: Yes.

Q: In the courtroom or outside?

A: He's in the courtroom.

Q: You say he's in the courtroom --

MR. WALKER: Your Honor, I'm going to object. I don't understand Counsel's questions about whether they're in court or not. If he wants me to disclose who my witnesses will be, I'll be glad to do that. Whether or not these people are in or out the courtroom or in

or out of the building is not relevant. If he's trying to find out which witnesses I'm going to call, I'll be glad to tell him which witnesses we're going to call.

MR. KRISCIUNAS: Your Honor, if I could respond, I simply wanted to find out whether those people are available should we want to call them, also. You know, it's not just the Defense's case; we have an opportunity for rebuttal, and I have that opportunity -- I should get that opportunity to determine whether these witnesses are available should we decide to call them.

MR. WALKER: For the State's information, your Honor, every one of those people is present somewhere in the building and I would be glad to produce any one of them that the State so desires.

THE COURT: Under the circumstances, I'm going to overrule the objection. There is a certain amount of relevance to it.

MR. KRISCIUNAS: Thank you, your Honor.

Q: (By Mr. Krisciunas) Now, I think you testified that sometime in June of 1978 you attempted to commit suicide; is that correct?

A: Yes, that's correct.

Q: Prior to that time you had been borrowing money from your relatives?

A: Yes, I had been borrowing money.

Q: And the first time that you had learned about Kareem's drug problem was in June of 1978?

A: Yes.

Q: But you were borrowing money prior to June of 1978?

A: Right.

Q: Is that correct, yes or no?

A: Yes, that's correct.

(344)Q: And you continued to borrow money after you learned about his problem; is that correct?

A: That's correct.

Q: And who did you tell, if you did tell anyone, about his problem?

A: I didn't tell anyone.

Q: In fact, when you borrowed the money you always told your relatives that you needed the money for your children, the boys?

A: Yes.

Q: After you said you asked Kareem to leave; isn't that true?

A: Yes.

Q: And you said you asked him to leave three or four times; isn't that true?

A: Yes, I did.

Q: And he never left; is that correct?

A: No.

Q: Did you tell your brother that you asked Kareem to leave and he wouldn't leave?

A: To get him hurt for what? I thought I could handle him, you know.

Q: You were afraid that you'd get your brother hurt; is that correct?

A: You know --

Q: Is that correct?

(345)A: Yes, that's correct.

Q: And would that be because you knew that Kareem carried a weapon of some kind?

A: I knew he had a gun, yes.

Q: What kind of a gun was it?

A: It's a long-barrelled black gun.

Q: Did he only have one?

A: That was the onliest one I ever saw him with. He might have had another one, I don't know.

Q: Is that the same gun he had on October 29th, 1978, during the time of the holdup?

A: Yes, it is.

MR. WALKER: Objection, your Honor, I believe the testimony was that Kareem had a silver gun.

MR. KRISCIUNAS: I'll leave that for the Jury --

THE COURT: I'll overrule the objection.

MR. WALKER: But your Honor, that's a conclusion --

THE COURT: Your objection is overruled.

Q: (By Mr. Krisciunas) Is that the same gun that he produced in the livingroom on october 29th, 1978?

A: It was one of the guns in the house, yes.

Q: Your home was on Mark Twain; is that correct?

A: Yes.

Q: And Ollie Scott lived over on Mendota, isn't that true?

A: That's true.

(346)Q: In terms of distance, in terms of miles or blocks, how far is that away -- how far is your house from Ollie Scott's?

A: A mile or so, I don't know exactly.

Q: More than a mile or less than a mile or you're not sure?

A: I'm not sure.

Q: Would it be fair to say that it's about a mile?

A: I think so.

Q: Now, I'll ask you to take a look at People's Exhibit Number Ten, which is a photograph; do you recognize that photograph?

A: Yes, I do.

Q: Whose pictures appear in that photograph?

A: Myself, Kareem and my babysitter.

Q: Do you know what her name is?

A: Yes.

Q: What?

A: Karen Jasper.

Q: Do you know where it was taken?

A: It was taken at the Latin Quarter on East Grand Boulevard.

Q: Do you know when it was taken?

A: No, I don't know exactly when it was taken -- it had to be cold because I had on my belted suit -- so it had to be kind of cool outside, but I don't know --

Q: How did you come into possession of this picture? This is your picture, isn't it?

(347)A: Right.

Q: How did you get possession of it?

A: Bought it. It was taken at the club.

Q: Do you remember about when that was?

A: No, I don't. Like I say, it was getting cold outside because the suit I had on was the belted suit.

Q: Did you go to the Latin Quarter a lot of times?

A: That was the first and only time that we'd ever been out together.

Q: I'm sorry?

A: I said that was the first and onliest time that we'd ever been out together like that.

Q: So you'd only been to the Latin Quarter one time in your life; is that correct?

A: Yes.

Q: Did you have a good time that night?

A: Not really.

Q: You had a bad time?

A: I was trying to -- like he came there, I was already there with my babysitter, and he came after he found out where I was.

Q: And was there any kind of an argument there?

A: Not there, no.

Q: You bought the picture?

A: Yes, I bought the picture.

(348)Q: Does it refresh your memory at all, now that you've said that you went there and you remember going there with your babysitter, that it was the only time that you'd been there and you remember that Kareem came there --

MR. WALKER: Objection, your Honor, I don't see the relevancy about this questioning about the Latin Quarter.

MR. KRISCIUNAS: I think it is relevant, your Honor. I think she can testify as to the date, now that she's given us more information on that. Maybe it's coming back to her and she remembers more details.

MR. WALKER: What's so relevant about the date? I see no relevance at all in the whole thing, and that's why I've objected.

MR. KRISCIUNAS: I think it could be relevant, your Honor.

THE COURT: I'll overrule the objection.

Q: (By Mr. Krisciunas) How long did you stay there?

A: Maybe an hour or two.

A: Now, you've remembered all those details about Kareem coming there after you got there first; is that correct?

A: That's correct.

Q: And you remember your babysitter being there; is that correct?

A: That's correct.

Q: You remember that that was the only time in your life that (349) you'd been there at the Latin Quarter; isn't that true?

A: That's true.

Q: Now, knowing all that, is your memory refreshed at all as to when that occurred, whether it was in October of 1978? Could it have been in October?

A: I can't tell you exactly when it was. I know it was during the time when it was cool outide because I did have to wear a coat. I don't know what month it was. I know there was

a particular group that we had went to see but I can't remember the name of the group.

Q: Let me ask you this then: Was Kareem already living with you when he came there?

A: Yes, he was.

Q: Had you known about Kareem's drug problem when he came there to see you?

A: Yes.

Q: So that means that it was at least after June of 1978; isn't that true?

A: Definitely true.

Q: And when this photograph was taken had you already attempted suicide?

A: Yes, I had.

Q: And that was in June of 1978, you told us, right, the first time?

A: Right.

(350)Q: then you tried to commit suicide again a second time; is that true?

A: Right.

Q: Do you remember what month that was?

A: That was in October.

Q: October of '78?

A: Yes.

Q: That was shortly before the incident on Mendota?

A: Yes.

Q: Okay, you tried to commit suicide a second time; is that true?

A: That's correct.

Q: And in relation to the second time you tried to commit suicide, was this picture taken before or after that?

A: I tnink it was before.

Q: Sometime before this incident on October 29th, and sometime before you attempted to commit suicide?

A: Right.

Q: Would it be fair to say that it might have been sometime in September of '78 that this photograph was taken at the Latin Quarter.

A: It's possible.

Q: You're positive, though, that it was after June of 1978, because that's the first time that you learned about his drug problem and that's the first time that you attempted to (351) commit suicide?

A: Yes, I'm sure that it was after June.

TESTIMOONY OF CLARISSA MARSH

Q: Thank you. Now, on October 29th, 1978, was that a Sunday?

A: Yes, it was.

Q: And on that Sunday you got up and went shopping at Eastland; is that correct?

A: That's correct.

Q: Did you go shopping alone or with someone else?

A: I went with my boys and Kareem.

Q: And during the course of your shopping there you lost your wallet?

A: Yes, I lost my wallet.

Q: And in your wallet there was some money; is that correct?

A: Yes, that's correct.

Q: Approximately, how much cash was there in your wallet?

A: Close to a hundred dollars.

Q: And you lost some credit cards; is that correct?

A: That's correct.

Q: You lost some money orders or bills?

A: One money order and a bill.

Q: How much was the bill for?

A: Eighty dollars.

Q: What was the bill for?

A: It was a telephone bill.

Q: That was an eighty-dollar phone bill for one month, the month (352) of October?

A: No, it wasn't; it was for several months. He had gotten behind on the telephone bill and it was what he needed to keep the phone on.

Q: When you lost this purse where was Kareem -- the wallet?

A: He was at the shopping center with me.

Q: And when you discovered that you lost the purse was Kareem by you?

A: Yes, he was.

Q: Did you tell Kareem that you lost your wallet?

A: It was evident because I had to go in the purse and get the wallet out to get the money to use to pay for the purchases.

Q: When he realized that you didn't have your wallet he got upset; is that correct?

A: Yes.

Q: And you were upset too because of all the money that you had lost?

A: Yes.

Q: You lost at least a hundred dollars?

A: Yes.

Q: Plus a money order for eighty dollars?

A: Right.

Q: Plus all those charge cards?

A: Right.

Q: Plus your identification?

(353)A: Right.

Q: You were very upset about that; right?

A: I was upset about it, yes.

Q: So you went to the Security Department at Eastland and you reported to them that you had lost your wallet?

A: Yes, I did.

Q: And the reason you did that was because you wanted them to notify you if anyone turned in anything; isn't that correct?

A: That's correct.

Q: And you gave them all the information about where they could reach you?

A: I think so.

Q: And you told them that you came there and how much money you had lost; is that correct?

A: Yes. They told me not to worry about the money, I wouldn't get it back no way.

Q: You told them about the credit cards?

A: Yes, I told them about my credit cards.

Q: And did you fill out a report and sign your name to that report?

A: No, I didn't. They told me to wait until Monday and to come back and check again. I had called out there three or four

different times checking to see if the wallet had been turned in.

(354)Q: Did you see anybody write your name down?

A: No, not that I can recall.

Q: You weren't concerned about that?

A: I was very concerned about my wallet. I had been over -- I gave them my name and my telephone number, but like -- I mean as far as him -- he was --

Q: You didn't see him write down your name or your address ior anything?

A: I saw him pull a book off the shelf; I don't know if he wrote anything in the book or not. I'm not sure. I couldn't see the desk; that desk was too low.

Q: So you went back to your house on Mark Twain; is that correct?

A: That's true.

Q: And you needed some money now; is that correct?

A: Kareem needed some money, yes.

Q: Since you had lost some money, somehow it was you who needed the money to give to Kareem?

A: I guess you could say that.

Q: Well, did Kareem start making phone calls to borrow some money?

A: No, he didn't have anyone to borrow any money from.

Q: You were the one that started calling people?

A: That's correct.

Q: And did you call Clarence Jackson?

(355)A: Yes, I did.

(356)Q: Did you get any money from Clarence Jackson?

A: No. He told me his house note was due and he wasn't able to give me any.

Q: How much money did you need?

A: I just asked him for whatever he could let me have.

Q: How much money did Kareem need?

A: A hundred dollars.

Q: I think you said you called Reverend Marsh but he wasn't in; is that correct?

A: That's correct.

Q: You called several other people on October 29th and no one was home; is that correct?

A: They either weren't at home or didn't answer of(sic) didn't have it.

TESTIMONY OF CLARISSA MARSH

Q: How many times had you been over to Ollie Scott's house on Mendota?

A: Not very many times; maybe three times -- two or three times, I'm not sure.

Q: When was the last time before October 29th, 1978, that you went there?

A: The last time that I actually saw Ollie Scott was when she came by my house.

Q: My question was when was the last time --

A: I haven't been over to Ollie's house between June or October, if that's what you're saying, no.

(357)Q: You hadn't been over there between June and October of 1978?

A: Right.

Q: But she had been over to your place on Mark Twain; is that correct?

A: That's correct.

Q: Was Kareem Martin there?

A: Yes, she was.

Q: How Many times did she come over?

A: She had been over to the house two times.

Q: I'm sorry?

A: Two times.

Q: Since June of 1978?

A: Once since June and once before that.

Q: You hadn't been over to her place; is that correct?

A: Not that I can remember, no.

Q: But you testified that you borrowed money from Ollie Scott; that you borrowed $50, $100, $25 --

A: Those periods, most of it happened while we were working. The $100 I got from her last time she come to the house; she brought it by because she told me she was going out and she could drop the money off at my house so I wouldn't have to come over to her house.

Q: And you stopped working in April of '78; isn't that true?

A: Yes, I did.

(358)Q: So when you were borrowing money from different people to help Kareem with this drug problem he had, you didn't borrow any money from Ollie Scott; isn't that true?

A: One time, and that was when I got the $100 from her.

TESTIMONY OF CLARISSA MARSH

Q: So you left your house to go over to Ollie Scott's on October 29th; isn't that true?

A: That's true.

Q: Who drove the car?

A: Kareem drove the car.

Q: Now, between your place on Mark Twain, what are the big streets in that area?

A: Grand River, Linden, Schaefer.

Q: And Ollie Scott's house on Mendota, what are the big streets around there?

A: Wyoming and Grand River.

Q: So when you got in the car you drove directly to Ollie Scott's house; right?

A: No, we did not.

Q: Where did you drive to?

A: We went by to pick up a friend of Kareem's.

TESTIMONY OF CLARISSA MARSH

Q: Where did you drive to?

A: In Highland Park on Moss Street.

Q: Who did you pick up?

A: A friend of Kareem's

Q: Did you find out his name?

(359) MR. HILL: Your Honor, there's a question of law here.

THE COURT: Ladies and Gentlemen of the Jury, at this time I'll ask you to step into the juryroom for a couple of minutes.

(Whereupon, at 2:49 o'clock p.m., Jury excused from courtroom.)

MR. HILL: Hour Honor, I think the People are entering an area here that I don't think should be entered.

THE COURT: On what grounds, Mr. Hill?

MR. HILL: Well, we had a Brutten-type situation that could be involved in this matter, and I thought we had resolved it. And now he is, with a great deal of specificity, going into what I thought was a prohibited area because of the Brutten situation here. He has now asked this witness where they went to pick up a certain individual, that is unnamed up to now. She has given an address; he is now inquiring of her the particular name. I would presume that name, if forced to be given, is going to be Benjamin Williams.

THE COURT: Well, we can solve that just by asking her.

MR. KRISCIUNAS: In fact, the next question I am going to ask, is after she learned the name is "do you see him in court today?"

MR. HILL: I'm sure you are, then I will move for a mistrial.

(360) MR. KRISCIUNAS: As a matter of fact, may I cite the Court the case of People versus Brutten, and the reason for the Brutten Rule is that you can't introduce a statement from a person who is not testifying against a person who is a co-defendant, and the reason for that is because the defendant, through his attorney, the co-defendant through his attorney, is unable to cross-examine the person making the statement; and that's why you Bruttenize the statement. That's why in this case we took out all the references to Clarisa Marsh in the original statement because the declarant of that statement was Benjamin Williams, and he was not available for cross-examination. This witness, Clarissa Marsh, is available for

cross-examination by Mr. Hill for Benjamin Williams. he can cross-examine her at this point to determine whether or not, or how accurate her memory is of the events as to identification. If I recall, in this case the Defense has filed a notice of alibi. Fernando Williams was called as a witness for the Defense --

MR. HILL: That would be error, your Honor, if he entered that before a Jury, and he ought to know that.

THE COURT: Well, the Jury is not present, as the record will reflect. They have been excused.

MR. HILL: Yes. There has been no defense of alibi in this case and the People know it. There's law on that and you ought to know the law.

MR. KRISCIUNAS: The defense has been filed -- (361) I'm sure that

it's in the court file and I have a copy of it --

MR. HILL: There's a recent case on that. I don't have to use that as a defense.

MR. KRISCIUNAS: All I'm stating is that there is an alibi notice that has been filed that Fernando Williams was the person who was listed on that alibi notice, and Fernando Williams testified that at around 6:30 on October 29th, 1978, he was in the company of Benjamin Williams, and that -- and that at 6:30 Fernando Williams left, and when he left Benjamin Williams was still at the house and after that he didn't see him again. Now, am I to assume that Counsel is not going to request an alibi instruction, because I would like to know that right now since we had testimony from an alleged alibi witness.

MR. HILL: On what basis could I possibly ask for an alibi instruction?

THE COURT: Mr. Hill, are you informing the Court at this time that you are not using the defense of alibi? There is an alibi notice in the file.

MR. HILL: Your Honor, There's been no testimony of alibi in this case. Where is it in the record that there's been any testimony of any alibi?

MR. KRISCIUNAS: I think that is a question of fact, your Honor. I think that it's something --

MR. HILL: It certainly is a question of fact.

MR. KRISCIUNAS: I Think it's something that this (362) Court is going to have to make a decision on and whether or not to give an instruction on alibi knowing full well that an alibi notice has been filed and knowing full well that one of those witnesses has testified.

THE COURT: Let me say this: This is a decision that the Court will have for you by tomorrow morning. But at this time I would state that no mention of alibi should be mentioned in front of the Jury at this time.

MR. KRISCIUNAS: I did not intend to do that.

THE COURT: I did not understand you to say that you did intend to mention that. But just for the purposes of argument, you had indicated that Fernando Williams had testified presumeably as an alibi witness. Mr. Hill at that point indicated that Mr. Fernando Williams was not testifying as an alibi witness, that the defense was in fact not alibi. Now, with regard to the argument that you are making relative to the ability of Defendant Williams' attorney to cross-examine Miss Marsh, do

you have any further argument, Mr. Krisciunas?

MR. KRISCIUNAS: Yes, your Honor. I think that he can cross-examine her and go into all of the details. I think that when you look at the cases on severence, you look at People versus Hearst and you look at inconsistent defenses or you look at antagonistic defenses, I think that the posture of the defense has to be examined and I think at this stage I don't think there are antagonistic defenses because they are different defenses. (363) Her defense is mere presence, and the Defendant's defense, to my thinking at this stage, was that his defense was an alibi based on the testimony of Fernando Williams and the notice that I received. So I don't think that Counsel is harmed. I think that the key point is that Counsel can

cross-examine the witness and ask whatever questions he wants to see if she has identified the right person. At this stage we don't even know if the person she picked out was Benjamin Williams.

Don't you think that that's important? Maybe she would say that this is not the man who was there. That might be important to the Defendant's defense; we might have the wrong man in court. That's also a possibility. That's a question that should be asked. I'm sure that the Jury is thinking about that. And if she says that it is Benjamin Williams, that he was the one that got in the car, he can cross-examine. If she says that he wasn't the one that got in the car, then I can cross-examine further.

THE COURT: Mr. Hill?

MR. HILL: Well, your Honor --

TESTIMONY OF CLARISSA MARSH

MR. KRISCIUNAS: If I could just add one other thing. I think that her testimony at this stage is cumulative, also, if she identifies Benjamin Williams. Perhaps we should do an in-camera hearing right now to detemine whether in fact he was the man that got in the car. Maybe we're just wasting our breath arguing about this point. Maybe she's going to say that (364) that's not the man. I would ask to be able to ask the witness whether or not Benjamin Williams was in fact the man that they picked up in Highland park on October 29th, 1978. I would ask permission to ask that question of the witness, especially out of the presence of the Jury. I would think that it would do no harm.

THE COURT: Let me say this to you: This discussion has come up because

of the fact that just as you were about to ask that question Mr. Hill made an objection, which I was placed in the position of having to rule on. It is the type of objection that would have to be made outside the presence of the Jury, and I was going to allow Mr. Hill an opportunity to respond to your argument which you had entered into, perhaps a little prematuredly, but with provocation as a result of Mr. Hill's statement relative to the anticipated questions you were about to ask.

The Court at this time is in agreement with you, Mr. Krisciunas, as far as not knowing what the witness is going to say, because the argument could be rendered mute by the answer. So I think at this time the best way to proceed would be for you to ask the question, at which point Mr. Hill could

renew his objection. You have already made your argument, and then Mr. Hill could make his argument.

MR. KRISCIUNAS: Yes, your Honor.

THE COURT: So we can proceed.

(365)Q: (By Mr. Krisciunas) Miss Marsh, on October 29th you went to an address in Highland Park with Kareem to pick up somebody, a friend of Kareem's; is that correct?

A: That's correct.

Q: Did you find out that person's name?

A: Yes.

Q: What was the person's name?

A: Benjamin Williams.

Q: Do you see Mr. Williams in court today?

MR. HILL: Well, this is what I

--

THE COURT: Just a minute, Mr. Hill, she hasn't indicated whether or not she does.

MR. HILL: All right.

THE COURT: Would you answer the question, Miss Marsh, please.

THE WITNESS: Yes.

Q: (By Mr. Krisciunas) Would you point him out, please. What is he wearing?

A: Burgandy pants and white shirt.

MR. KRISCIUNAS: Let the record indicate that the witness has identified the defendant, Benjamin Williams.

I think we can continue with the argument, your Honor.

MR. HILL: This is what I anticipated; that's why I arose at the time.

(366) THE COURT: I think your objection might have been premature to the question but I think it was proper because the Jury was present and would have heard the answer.

MR. HILL: I think People versus Hearst speaks to this particular point. And if may, I would like to quote from part of it. I think the Court said in that case that the tendency of the testimony -- and I would relate that word to the testimony in this case, as the Court did in the first case -- the tendency of the testimony reads as to accuse the other. The Court went on to say that the State is required to avoid, and I would quote again, pitting one defendant against the other. And I think that's exactly what we have here, when the Prosecutor, in order to obviously solidify his case against the

co-defendant -- when he asks the witness the specific address where she went along with another party, and then when he pursued that further and has gone into the record here, but out of the presence of the Jury, who that individual was, and the witness has testified that the party was a Benjamin Williams, and pursued it further by identifying Benjamin Williams, the Defendant in this case, I think clearly in that instance the Brutten type situation that the Court had in mind is on all fours that we have here. We certainly didn't go through all the very careful procedure of blotting out certain remarks allegedly made by one Benjamin Williams with regard to this witness, but for the rule, as I understand it in the Brutten type situation, and I would say here that my co-counsel was very careful in his direct examination (367) to avoid

the pitfall that I think we've fallen into, or are about to fall into if this type of cross-examination is permitted; that there is no right to force Benjamin Williams to take the stand and to have to defend himself in any form or manner, and the result of this type of tactic, if I might use that term -- and i don't use it disparagingly -- would be to force us into proceeding in a manner that is inconsistent with the right of this Defendant to take the stand or to refuse to take the stand. And since he has exercised that right and refused to testify in his own behalf, to allow this procedure to be followed, would be tantamount for him to take the stand and defend himself under circumstances where the rule of law is to the contrary; and I would have no alternative, if the People are permitted to pursue this matter further -- I think damaging -- I think

damage has been done at this point -- but certainly a full damage would occur if the witness is asked to respond to the question that hasn't been asked in the presence of the Jury to such an extent that I would have to ask the Court to declare a mistrial.

THE COURT: Any thing further, Mr. Krisciunas?

MR. KRISCIUNAS: Yes, your Honor, if I might respond. I'm sure Counsel is aware that when a statement is Bruttenized, references in the statement to co-defendants must be deleted. However, and for the reason that the declarant is available for cross-examination by the co-defendant's attorneys. however, if the declarant does take the stand he can be questioned (368) regarding the entire statement, including references to co-defendants,

for the reason that at that stage he is subject to cross-examination.

What we have here is the reverse of that situation, while rather than having a written statement, which Brutten goes to, we have the witness herself being asked about the res gestae of what occurred. She too is subject to cross-examination by the Defense Counsel, and that's the exception; that's why we can go into all that.

THE COURT: Anything further?

MR. HILL: I don't want to prolong it, but that just isn't the rule of law, your Honor, that it ignores the rights of the co-defendant to testify in a case involving an allegation of a criminal act having been committed by him. That's what Brutten is all about, and that's why in some instances we sever defendants because if we don't the Court

can't protect the defendant when there's an instance like this, and there's a possibility that that surely exists here. The testimony will come out which will force him to do an act which the law doesn't require him to do and which under these circumstances he has elected and desires not to testify in his own behalf.

MR. KRISCIUNAS: People versus Hearst talk about the defendant's pointing the finger at themselves. I'm sure the Court is familiar with the situation in People versus Hearst where the People's theory was, well, we don't know which one of the (369) two defendant's committed the homicide, but it's got to be one of the two. Why don't you, members of the jury, find out which of the two it is; and then both defendants were engaged in a finger-pointing contest where they placed

the blame on each other. And they said in that type of a situation a severence should have been granted because you can't have the defendants pointing their finger at each other.

Clarissa Marsh is not pointing the finger at someone else committing the crime. She does not deny that the crime occurred. She is admitting that the crime occurred, and she's saving merely that she had nothing to do with it, I was coerced into it. So there is not an antagonitic defense where she is pointing her finger at Mr. Williams, and Mr. Williams in turn takes the stand and says I was the one -- I didn't commit the crime, she was the one that forced me, or something like that, and that's not the type of situation that we have at all. That's why I think it's important about the notice of alibi because the Defense

position, to my mind, was that it was an alibi case and therefore, again, there's no antagonism between the defense of alibi and the defense of duress or mere presence.

MR. HILL: Your Honor, there is a recent case where the Court spoke clearly on the question of alibi, that people can't comment on that fact unless it's actually been put in. There's been no alibi in this case. But what you say of course would simply ignore the testimony of Cynthia Knighton. As (370) I recall her testimony, I think she testified -- I'm sure the Jury hears -- about the possibility of three people being involved in this particular case, and certainly one of them being the Defendant Benjamin Williams. If we view that testimony in light of what you're going to bring out here, I don't see how

you can involve that which I'm arguing here. It would be to ignore completely the testimony of Cynthia Knighton.

MR. KRISCIUNAS: If I might comment on the case that Counsel cites about the alibi, that's a case where the defense filed a notice of alibi and then the prosecutor introduced the notice into evidence and then argued to the jury that they filed a notice of alibi, where are those alibi witnesses. I'm not doing that at this stage. I don't intend to do that, if the Jury is not going to be instructed on alibi.

THE COURT: Well, I do have before me a notice of alibi.

MR. HILL: You certainly do, your Honor.

THE COURT: Filed by you on February 20th. The alibi witness's name is Fernando Williams.

MR. HILL: But there's no requirement at all that I use that alibi, and the court has spoken to that. There's no requirement at all.

THE COURT: Since you say that at this time alibi will not be a defense, the Court will rule that no mention of alibi or mention of the notice of alibi that was filed with the (371) Court shall be made in the presence of the Jury during the course of the trial or during argument.

Relative to the motion regarding the testimony of the witness Clarissa Marsh, as it relates to Benjamin Williams, the Court being familiar with the Brutten case recalls the facts of that case in which one defendant made a statement which inculpated the other defendant. The defendant that made the statement did not take the stand, thus it

completely eliminated the co-defendant's right to confront his accusers and to cross-examine witnesses against him. For that reason, the Court reversed Brutten, and that is what has become known as the Brutten rule and it has called for the so-called Bruttenizing of admissions, confessions or other statements of co-defendants in joint trials.

Now, this Court is of the opinion at this time that the Brutten question, since Brutten dealt with a written confession, would go to the right of Clarissa Marsh to confront Benjamin Williams and cross-examine him, had she been implicated in this statement. That problem does not exist here. The question that is being raised at this time is whether or not Mr. Williams' right of confrontation and cross-examination is in jeopardy because

of statements that may be made by his co-defendant, Clarissa Marsh, and whether or not, as in the Hearst case, it would become a finger-pointing and lead the Defendants to prove to the Jury who did what.

(372) I do not see that as a problem in this case, either, because of the testimony that is on the record. Because of the testimony that is already on the record from Miss Marsh, you have made a motion for a mistrial; that motion is denied because I'm not convinced that it is such a situation that would call for a mistrial or any prejudice to the right of Mr. Williams.

I will say this to you, though, Mr. Hill; I will not have a closed mind on it. If at some future date you would wish to renew the motion and show me some compelling reason for granting it or to

reconsider it, the Court would do that. But at this time I feel that the Prosecution can cross-examine Miss Marsh relative to who that third individual was that she's already testified to and the things that were done by the third individual, since she has testified as to what the third individual did on direct examination, but not mentioning that person by name. And you are also present in court capable of cross-examining Miss Marsh and thus protecting the rights of Mr. Williams relative to his right to confrontation and cross-examination.

So the motion to limit the Prosecution's cross-examination is denied as is the motion for a mistrial at this time.

Mr. Walker?

MR. WALKER: Your Honor, then what happens in the situation of course

is that we've got the Hearst situation with Miss Marsh, and that's what I raised, and now she has to (373) face -- pursuant to your denial of his motion, then she's going to have to face cross-examination from the State and from her co-defendant, and this is exactly the situation in Hearst. And I have already put my motion on the record several times for severence in this case, and this is exactly what I contempled when I brought that motion initially, and I kept renewing it and kept renewing it and kept renewing it. So for the record, I join Mr. Hill in his motion and I renew my motion again.

THE COURT: I see a distinct difference between the Hearst case and the situation we have here, Mr. Walker, so your motion is preserved on the record but it is denied.

TESTIMONY OF CLARISSA MARSH

MR. HILL: May I just inquire how far will the People be able to go in this particular area? The door is open now, now how far could he go to this witness incriminating this Defendant with resting his case and not taking the stand? I can't see how my right or my option to cross-examine this witness will cure anything.

THE COURT: Mr. Krisciunas?

I have no idea how far the Prosecutor intends to go as far as cross-examination.

MR. HILL: Then may I impose an objection at this stage of the proceedings, so that we don't have the Jury jumping in and out, that from henceforth any testimony that is of and concerning Benjamin Williams, as coming from this witness through cross-examination by the People, I object

to as being a Hearst type (374) situation and cannot be cured by what the Court has said of my right to cross-examine the co-defendant; That's what I would be doing. She's a co-defendant.

THE COURT: That is correct.

Mr. Krisciunas?

MR. KRISCIUNAS: Finally, your Honor, I would indicate, as Mr. Walker said, that this is exactly the type of situation that he contemplated from the beginning by filing his motions to sever. I would indicate just for the record that at no point in time did he ever define the possible antagonistic defenses or possible inconsistencies, and it is at this time now in trial that the argument was made that she was merely present. I think that the original --

THE COURT: If I recall the original defense was the possiblity of insanity.

MR. WALKER: No, your Honor, that was never a defense in this case. I had her referred --

THE COURT: I may be wrong.

MR. WALKER: We had her referred for psychiatric evaluation and that was to have her evaluated for our own purposes I never mentioned that word. I think Mr. Kenny, when he was on the case, brought that possibility up and said well I want to have her examined, too. But those words never came from my mouth or my pen. And if Counsel will look at the original motion that I filed with this Court on December 27th, 1978, I clearly (375) set out the factors that I thought were comtemplated occurring at this trial. And therefore, I made my motion and that's all contained in my affidavit in that motion. And if Counsel doesn't have a copy of my motion I'll be

glad to give it to him. It should be in the file. Mr. Kenny was in the case at that time.

MR. KRISCIUNAS: Well, I've got the affidavit your Honor, and it states that the antagonism between the defendants' defenses seem to emerge in light of the following facts: Since both Defendants have no prior record and have been offered no reduced plea, it is likely that they will both take the stand in their own defense. On October 30th, 1978, Defendant Benjamin Williams made extra judicial statements in the form of a signed statement to the Detroit Police wherein he inculpates Defendant Marsh while seeking to exculpate himself. At the Preliminary Examination held November 9th, 1978, an eye-witness indicated that two out of the three of the alleged robbers led the shooting victims to the

basement of the house where they were all shot. Such factors have potential for adversely affecting the rights of Clarissa Marsh to a fair trial as follows: It pits one Defendant against the other. It subjects Clarissa Marsh to cross-examination by both the Prosecutor and the other Defense Lawyer. The conflicting testimony of the Defendants and the winesses coupled with the multi-count indictment will present a confusing picture to the Jury as to (376) alleged roles of the parties involved and the consequential culpability. The affiant is advising the Court of potential conflicts so as to aid it in its exercise of discretion in preserving the substantial rights of Defendant Clarlsa Marsh. These allegations are made from the affiant's personal knowledge, information and belief. Further Deponent sayeth not.

I submit to the Court that if that is not specifically stating what the antagonism is sufficiently to allow the Court to make a ruling on it -- and even though -- even if this is the alleged antagonism, it is not enough under People vervus Hearst to cause for severence. And I would ask the Court to deny the Defense motion for severence.

MR. WALKER: Your Honor, I would apologize to the State that my powers for foretelling the future are not exactly accurate, but I think the spirit of the cases is followed in this motion in that I at that time, in December, did the best I could to predict what I foresaw at that time as happening. And I believe that many of the things I did say have in fact come true. If I were a hundred percent correct I wouldn't bein (sic) this business.

TESTIMONY OF CLARISSA MARSH

THE COURT: Let me say this, Mr. Walker: I'm sure that you cannot look into the future and I'm sure that you acted in good faith. I don't even know why anybody would raise that even as part of a statement in regard to the motion. But at the time that you raised the motion for severence, later it (377) could have been predicted with more certainty what specific conflict there might be. While I'm still not convinced that there's such a conflict --

MR. WALKER: Well, I didn't know what the co-defendant was going to do. He's not going to tell me, "Well, I'm going to do this and I'm going to do that," because --

MR. HILL: May I say this, that as part of the defense of Benjamin Williams up to now is that he has not and is not involved in this. At a separate

hearing he has denied that the signature is his signature that is affixed to the statement that has been read into the record, and it's up to the statement that has been read into the record, and it's up to the Jury, not the Court, to determine, number one, whether he in fact made that statement, because if he didn't make that statement then there's no involvement of this particular Defendant in this particular crime, except the testimony of a particular witness, and the Jury has a right to believe or disbelieve a witness.

Now, to compound that and to permit this witness, a co-defendant, to implicate this Defendant, under the circumstances, has no other affect than to force this Defendant to take the stand, which he cannot do at the present time and defend himself; because his

defense is that "I am not involved in any of this." That's the defense, your Honor. There can be no other.

THE COURT: Well, my previous ruling stands. I believe my original question to Mr. Krisciunas was how far did (378) he anticipate going on cross-examination of Miss Marsh relative to the actions of Mr. Williams throughout this entire transaction.

MR. KRISCIUNAS: I really don't anticipate going into it that much more other than to perhaps some of the things that went on in the livingroom and the timing.

THE COURT: The Court is going to take a five-minute recess.

(Short recess.)

THE COURT: Are you ready to proceed?

MR. WALKER: Yes, your Honor.

TESTIMONY OF CLARISSA MARSH

MR. HILL: Yes, I'm ready, your Honor.

THE COURT: Mr. Krisciunas?

MR. KRISCIUNAS: Yes, your Honor.

(Whereupon, at 3:32 o'clock p.m., Jury returned to courtroom.)

THE COURT: Do Counsel stipulate that all the members of the Jury are present and in their respective places?

MR. KRISCIUNAS: The People so stipulate.

MR. HILL: Defendant Williams so stipulates.

MR. WALKER: Yes, your honor.

THE COURT: You may proceed, Mr. Krisciunas.

Q: (By Mr. Krisciunas) Miss Marsh, I believe that you were

in a car with Kareem and that Kareem was driving the car; is that correct?

A: That's correct.

(379)Q: You drove to Highland Park to an address on Moss; is that correct?

A: That's correct.

Q: You picked up a friend there; is that correct?

A: Correct.

Q: And I believe I asked you a question, did you find out that person's name.

A: Yes.

Q And could you tell us what his name was -- is?

A: Benjamin Williams.

Q: Do you see Mr. Williams in court today?

A: Yes, I do.

Q: What is he wearing?

A: Burgundy pants and white shirt.

KR. KRISCIUNAS: Indicating the Defendant Benjamin Williams.

Q: (By Mr. Krisciunas) Is this the same Benjamin Williams that you and Kareem Martin picked up -- is this the same man in court today?

Q: Yes.

A: Now, I believe that you drove over to the house on Mendota; is that correct?

A: Yes.

Q: And who got out of the car first?

A: Kareem.

(380)Q: Kareem and you?

A: Yes.

Q: Did Mr. Williams get out of the car, too, or did he stay in the car?

A: He stayed in the car.

Q: Was the engine still running to the car?

A: I think so.

Q: You went to the house; is that correct?

A: Yes.

Q: You got in the house and you talked to Ollie Scott; is that correct?

A: Yes.

Q: And there came a point in time when Mr. Martin, Kareem, pulled out a gun; is that correct?

A: Yes.

Q: Do you recall what he said when he pulled out the gun?

A: I don't think he said anything when he first pulled it out.

Q: Did you say anything after he pulled it out?

A: I don't know the exact words. He said something about somebody's brother or something.

Q: Would it be fair to say that he said something about somebody's brother getting killed?

A: Yes.

Q: And then a short time later Mr. Williams came into the house; is that correct?

A: Yes.

Q: And you let him into the house; isn't that true?

A: I beg your pardon?

Q: You let him into the house?

A: Yes.

Q: You opened the door and he came in; isn't that true?

A: Yes.

TESTIMONY OF CLARISSA MARSH

Q: This motel that you went to; the Crown Motel, do you know where that's located?

A: It's on Woodward in Highland Park.

Q: In Highland Park?

A: Yes.

Q: How close is it to the are(sic) in which Benjamin Williams was picked up on Moss?

MR. HILL: Materiality, your Honor.

THE COURT: Overruled.

Q: (By Mr. Krisciunas) Miss Marsh, this car that Kareem drove, what kind of a car was that?

A: '77 black Monte Carlo.

Q: Whose car was that?

A: It's my car.

TESTIMONY OF CLARISSA MARSH

Q: There came a point in time I believe you said that -- strike that. When you turned yourself in to the police, you turned your kids over to Josephine Martin; isn't that true?

(382)A: That's true.

Q: Who is Josephine Martin?

A: That's Kareem's sister.

Q: Where was she living at the time?

A: It's on Cloverlawn; I don't have the number.

Q: At that time you knew the address?

A: Yes, I did know the address at that time? I sent them over in a cab.

Q: To a particular address on Cloverlawn?

A: Right.

TESTIMONY OF CLARISSA MARSH

Q: Now, you are in the house and Mr. Williams comes in and I think you said there was a point in time when Ollie Scott was taken upstairs; is that correct?

A: Yes, she was.

Q: And Kareem took her upstairs?

A: Yes.

Q: And sometime later he came down and gave you a bag or some bags?

A: Yes, he gave me a bag.

Q: One bag?

A: Yes.

Q: Did he put that bag down here on the chart close to the lamp?

A: I was standing closer to the door so it would be on the outside of the lamp. He just set it down on the floor as (383) he came down.

TESTIMONY OF CLARISSA MARSH

Q: Then did there come a point in time when Kareem took out his gun, walked her towards the diningroom; is that correct?

A: Yes.

Q: And then she was out of your view; is that correct?

A: That's correct.

Q: And Mr. Williams, he was still in the livingroom at that time; is that correct?

A: I'm not sure whether he was in the livingroom or the diningroom.

Q: At any rate, Kareem walked out of your sight; is that correct?

A: That's correct.

Q: And Ollie Scott walked out of your sight?

A: That's correct.

TESTIMONY OF CLARISSA MARSH

Q: The only people in the livingroom at that time are you and Cynthia Knighton and Koran Knighton; is that true?

A: Are you talking directly after they came downstairs or when?

Q: I'm talking about when Kareem took Ollie Scott into the diningroom and after you couldn't see Ollie Scott anymore.

A: Right, the three of us were in the livingroom.

Q: By the way, you said that you were standing here and you were looking at the walls, staring at the walls; isn't that true?

(384)A: Yes.

Q: Which wall were you staring at?

A: This wall directly by the door with the TV set up against it.

TESTIMONY OF CLARISS MARSH

Q: Are you talking about this wall right by the door or this wall here --

A: We're talking about the wall between the livingroom and the kitchen.

Q: Somewhere over in this area?

A: Right.

Q: You're standing here watching this wall; is that right?

A: I was just standing there, yes.

Q: It was then that Benjamin Williams told Koran and Cynthia Knighton to go with him, too; isn't that true?

A: Yes.

Q: And they walked into the diningroom and out of your sight?

A: Yes.

Q: So the only person in the livingroom at that time was you; isn't that true?

A: That's true.

Q: So at that point you realized that this was your opportunity to get out of that house?

A: Yes.

Q: So you went over to the table where your purse was -- the table here?

(385)A: The table is much longer than what it's depicted on that picture.

Q: That table was in front of the couch; isn't that true?

A: That's correct.

Q: So you went from the area of the door to the table, picked up your purse and you went out which door?

A: The front door.

Q: Where you enter the house; is that true?

A: That's true.

Q: You were not walking around; correct?

A: No, I did not go walking around. I went south on Mendota towards Fullerton.

Q: When you got to Fullerton you saw your car?

A: No, I did not. I was headed towards Grand River to catch a hide(sic) to get home. And as I crossed over Fullerton to the other side of Mendota, as I was walking by, I saw the car sitting there.

Q: And you got in the car; is that correct?

A: That's correct.

Q: And you drove the car away; right?

A: Yes, I did.

Q: The keys were still in the car?

A: The keys were still in the car.

Q: You drove away and you said that the first thing you did was you drove over to see your children?

(386)A: I went to get my boys.

Q: You went and picked up your boys?

A: Yes.

Q: Drove around for awhile?

A: Yes, I did.

Q: Didn't know what to do?

A: No, I didn't.

Q: Needed time to think; right?

A: Yes, I did.

Q: Your boys were tired?

A: Yes.

Q: Then you got tired?

A: Yes.

Q: So you decided that you would call your brother?

A: Yes.

Q: You called your brother, Clarence Jackson?

A: Clarence Jackson.

Q: Told him to meet you at the Crown Motel?

A: Yes. I didn't have no identification and didn't have no money.

Q: You needed Clarence Jackson so that he could register you into the room?

A: Yes.

Q: You needed Clarence Jackson so that he could get you some money?

A: Yes, to get a room.

(387)Q: So you drove over to the Crown Motel?

A: Yes.

Q: Did you meet Clarence Jackson there?

A: Yes, I did.

Q: Did Clarence Jackson have some money?

A: Yes, he had a little bit of money.

Q: And did he register in his own name?

A: Yes, I did.

Q: And then you stayed in that room?

A: I did.

Q: Did your children stay?

A: No.

Q: Did you walk your children back to your brother's car?

A: They remained in the car. In fact, my brother and the kids

stayed in the car and I went up to the room. He gave me the key and I went upstairs to the room.

Q: Did you kiss them goodbye?

A: Yes, I did.

Q: The motel room you were in at the Crown Motel, did it have a television?

A: Yes, it did.

Q: Is that where you learned about the fact that there were some murders on Mendota?

A: Yes, it was.

Q: So you were concerned; isn't that true?

(388)A: I was sick to my stomach about the whole thing, you know.

Q: So you called the police to let them know about the fact that you knew what had occurred at that address; isn't that true?

A: No, it is not true.

Q: Instead, you called Josephine Martin?

A: Yes, I did.

Q: Had your brother come back to the motel?

A: No.

Q: How did you get your kids again the next day?

A: By cab.

Q: Why didn't you drive your car from the Crown Motel?

A: I was scared to get in the car; I didn't know if anybody had seen me, or not. I was just running around in circles.

Q: So you left the car, the black 1977 Monte Carlo, in the parking lot of the Crown Motel; isn't that true?

A: No, I did not leave it in the parking lot of the Crown Motel.

TESTIMONY OF CLARISSA MARSH

Q: Well, you just told us --

A: I told you I met my brother at the Crown Motel. I drove my car to the Crown Motel. My car was around the Crown Motel but I did not take it directly to the Crown Motel.

Q: I'm sorry, you left your car in the vicinity of the Crown Motel?

A: Yes, it was.

(389)Q: Did you tell your brother, Clarence Jackson, what happened on Mendota?

A: No, I didn't.

Q: You called Kareem's sister Josephine; is that correct?

A: Yes, I did.

Q: And you got the name of an attorney?

A: Yes, I did.

Q: And you took a cab over to Mr. Walker's house?

A: Yes.

Q: What did you do to the keys to the car?

A: Gave them to my brother.

Q: Mr. Jackson?

A: Yes, He had one set and I still had another set.

Q: Do you know where that car is now?

A: I believe it's sold.

Q: Do you know who sold it?

A: My mother.

Q: What's your mother's name?

A: Elizabeth Jackson.

Q: She's present in court; isn't that true?

A: She's out in the hall.

Q: Thank you.

I have no further questions.

MR. HILL: Nothing, your Honor.

TESTIMONY OF CLARISSA MARSH

MR. WALKER: I have nothing further.

(390) THE COURT: Thank you, Miss Marsh, you may step down.

(Witness excused.)